TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 160.

GREER COUNTY, OKLAHOMA TERRITORY, PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

FILED DECEMBER 24, 1904.

(19,171.)

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a

GREER COUNTY ET AL.
vs.
THE STATE OF TEXAS. } No. 2901.

1 *Caption.*

THE STATE OF TEXAS, }
County of Travis. }

At a term of the district court of the 26th judicial district of Texas, begun and holden at Austin, within and for the county of Travis, before the Honorable R. E. Brooks, and ending on the 2nd day of May, A. D., 1901, the following case came on for trial, to-wit:

THE STATE OF TEXAS
vs.
GREER COUNTY ET AL. } No. 16142.

Plaintiff's Second Amended Original Petition,

Filed December 18th, 1900.

In the District Court of Travis County, Texas, 53rd Judicial District.

THE STATE OF TEXAS
vs.
GREER COUNTY ET AL. } No. 16142.

Now comes The State of Texas, plaintiff herein, by T. S. Smith, attorney general, and by leave of the court, first had and obtained, files this her second amended original petition in substitution of her first amended original petition filed herein on May 25th, 1900, and making additional parties herein, and for such amended petition, plaintiff says as follows:

In the District Court of Travis County, Texas, 53rd Judicial District.

THE STATE OF TEXAS
vs.
GREER COUNTY ET AL. }

2 The State of Texas, herein styled plaintiff, through her attorney general, T. S. Smith, complaining of Greer County and of Mrs. Flora Cameron, Wm. Cameron, Fred McDonald and R. H. Downman, executors of the last will of Wm. Cameron, deceased, and of the said Mrs. Flora Cameron and Wm. Cameron, who are sued

herein as well in their individual capacities, Mrs. Sadie McDonald, with whom is joined herein her husband Fred McDonald, in his individual capacity, Mrs. Annie Downman, with whom is joined herein her husband R. H. Downman, in his individual capacity, Miss Flora Cameron and Miss Maggie Cameron, all of whom are hereinafter styled defendants, respectfully showeth:

That the defendant Greer County is an organized county in the Territory of Oklahoma, one of the Territories of the United States. That all of the other defendants reside in McLennan county, in the State of Texas.

Plaintiff represents that in the original petition in this cause Greer County and Wm. Cameron were defendants. That pending said suit, towit: on the 6th day of February, 1899, the said Wm. Cameron died, and that thereupon the cause was dismissed as to him, his heirs and legal representatives, without prejudice to the rights of the State of Texas to again implead his heirs and legal representatives herein.

That said Wm. Cameron left a will which was duly admitted to probate and record in McLennan county, Texas, and that by the terms thereof, the defendants Mrs. Flora Cameron, Wm. Cameron, Fred Donald and R. H. Downman were appointed independent executors, with authority to administer said estate independently of the jurisdiction and control of the probate court, and duly qualified and are now acting as such, and that they, together with the defendants, Mrs. Sadie McDonald, Mrs. Annie Downman, Miss Flora Cameron and Miss Maggie Cameron, are the heirs at law of the deceased, Wm. Cameron, and legatees and devisees of his estate under his will aforesaid, and as such are in possession of his estate, and claim title to the lands hereinafter described.

Plaintiff represents that on, towit: the first day of January, 1898, the plaintiff being the owner thereof, was lawfully seized and
3 possessed of the tracts of land hereinafter described, holding the same in fee simple, and that the defendants, Greer County and Wm. Cameron, on said date, unlawfully entered upon said premises and ejected the plaintiff therefrom.

That the defendant Greer County, from the date of its unlawful entry upon said premises, as aforesaid, to the present time, and said Wm. Cameron from said date to the time of his death, and the other defendants named herein as his heirs and legal representatives of Wm. Cameron, and devisees under his will, since his death to the present time have withheld and now withhold possession of said lands and premises from plaintiff, to the damage of plaintiff $5,000.00.

Plaintiff represents that said lands so entered upon and withheld, are described as follows:

One league of land situated and described as follows: In Cochran county, Texas, known as league No. 86, about 12½ miles N. 60 E. from the center of the county. By virtue of an act of the legislature of the State of Texas, approved April 7th, 1883, chapter 85, General

Laws of 1883. Beginning at a mound three feet high at the N. E. corner of league No. 85; thence W. 5000 varas to a corner; thence N. 5000 varas to a point; thence E. 5000 varas to a mound three feet high and eight feet in dia.; thence S. 5000 varas to the place of beginning.

Eleven million, six hundred and forty five thousand, four hundred and fifty one (11,645,451) square varas of land, situated and described as follows: In Cochran county, Texas, being a part of league No. 85, about 11½ miles N. 67 E. from the center of the county. By virtue of an act of the legislature of the State of Texas, approved April 7th, 1883, chapter 55, General Laws of 1883. Beginning at the N. W. corner of a survey for Shackelford county, a stake; thence 2329 1-10 varas to the N. W. corner of league No. 85; thence E. 5000 varas to a mound three feet high and eight feet in dia., the N. E. corner of league No. 85; thence S. 2329 1-10 varas to a stake, the N. E. corner of said Shackelford County school land survey; thence west with the N. line of said survey 5000
4 varas to the beginning.

One league of land situated and described as follows: In Cochran county, Texas, known as league No. 87, about 14 miles N. 49 E. from the center of the county, by virtue of an act of the legislature of the State of Texas, approved April 7th, 1883, General Laws of 1883, chapter 55. Beginning at a mound three feet high, the N. E. corner of league No. 86; thence W. 5000 varas to the N. W. corner of league No. 86; thence N. 5000 varas to a mound three feet high and eight feet in dia.; thence E. 5000 varas to a mound three feet high and eight feet in dia.; thence S. 5000 varas to the beginning.

One league of land situated and described as follows: In Hockley county, Texas known as league No. 88, about 16 miles N. 42 E. from the center of the county. By virtue of an act of the legislature of of State of Texas, approved April 7th, 1883, chapter 55, General Laws of 1883. Beginning at a mound 20 feet in dia., the S. W. corner of league No. 701; thence W. 5000 varas to an earth mound three feet high and eight feet in dia., for the N. W. corner of league No. 87; thence N. 5000 varas to a mound three feet high and eight feet in dia., for corner; thence E. 5000 varas to a mound in dry basis, from which the spring on west bank of Silver lake bears N. 7230 E., 2582 varas; thence S. 5000 varas to the beginning.

Thirteen million, three hundred and fifty four thousand, five hundred and forty nine (13,354,549) square varas of land, situated and described as follows: In Cochran county, Texas, being a part of league No. 109, about 17½ miles N. 39 E. from the center of the county. By virtue of an act of the legislature of the State of Texas, approved April 7th, 1883, chapter 55, General Laws of 1883. Beginning at a rock and dirt mound, the N. W. corner of league No. 88; thence N. 1929 varas, passing a large rock hill, the N. E. corner of league No. 105, at 2670 9-10 vrs. a stake for corner; thence E. 5000 varas a stake for corner; thence S. 2670 9-10 varas, a mound three

feet high and flat rock on top in dry basin, from whence the spring on west bank of Silver lake brs. N. 7230 E. 2582 varas;
5 thence W. 5000 varas to the beginning.

That the use and occupation of said land- during the time they were and are so unlawfully withheld from plaintiff, and used and occupied by the defendants, and by the said Wm. Cameron, are reasonably worth the sum of $1000 per annum, for which the defendants are liable to plaintiff.

Plaintiff represents that the defendants claim title to said land under and by virtue of certain patents issued by L. S. Ross, governor of the State of Texas, to Greer county, (Texas) dated July 18th, 1887, the said Greer county (Texas) comprising the same territory as is embraced in the defendant Greer County, Oklahoma Territory, which said Greer county, Texas, had been attempted to be organized under the provisions of the general laws of the State of Texas, as a county of Texas, the territory thereof being without the limits of the said State of Texas and within the limits of the present Territory of Oklahoma, one of the Territories of the United States.

That said patents and each of them were issued without legal authority, and are null and void, and plaintiff prays that the same be cancelled, set aside and held for naught.

Plaintiff therefore sues, and the defendants having appeared and filed answer herein, on final hearing, plaintiff prays judgment against all of the defendants for the title and possession of the lands hereinabove described, and her rents and damages as herein aforesaid, for execution and writ of possession, and plaintiff prays for such other and further relief, both in law and in equity, as she may be entitled to, and for general relief. And the defendants and each of them are herein notified to produce upon the trial of this cause the original patents issued by L. S. Ross, as governor, as aforesaid, for the lands aforesaid, and the original deeds in their chain of title thereto.

T. S. SMITH,
Attorney General, and
T. S. REESE,
Assistant Attorney General,
Attorneys for Plaintiff.

6 (Endorsed:) No. 16,142. The State of Texas *vs.* Greer County *et al.* Plaintiff's second amended original petition. Filed Dec. 18, 1900. Jas. P. Hart, clerk.

Answer of Defendant Greer County.

Filed December 18th, 1900.

In the District Court, 26th Judicial District, at Austin.

THE STATE OF TEXAS
vs.
GREER COUNTY ET AL. } No. 16142.

In this cause comes Greer County, one of the defendants herein and answering plaintiff's first amended original petition herein filed on towit: May 25th, 1900, pleads as follows:

1. This defendant demurs to plaintiff's petition, and says that the allegations and averments therein contained are not sufficient in law to entitle plaintiff to have and maintain this action; and of this defendant prays judgment of the court.

2. And for a special demurrer to plaintiff's said first amended original petition this defendant says that the allegation of plaintiff in said petition that the patents issued by L. S. Ross, governor of the State of Texas, to this defendant, Greer County, dated July 18, 1887, were issued without legal authority and are null and void, and plaintiff prays that the same be cancelled, set aside and held for naught, is totally insufficient in law for that said petition fails to disclose by appropriate and proper averment how and in what manner said patents are null and void and why the same were issued without legal authority. Said allegation is a mere conclusion of the pleader without a statement of any facts by which the court would be able to determine from the allegations of the petition whether or not said patents were issued without legal authority and are null and void, as claimed by plaintiff. And of this the defendant, Greer County, prays judgment of the court.

7 3. This defendant, Greer County, here now disclaims all right, title or interest in and to all the lands sued for by plaintiff in this action, except the following: 7236 acres of land off the north end of the Greer County school land leagues, consisting of all that part (the south part) of league No. 109, which is patented to Greer county by patent No. 523, vol. 24, consisting of 13,354,549 square varas of land, and all of league No. 88 of 4428 acres, and the balance of said 7236 acres off the north side of league No. 87 as follows: Beginning at the N. E. corner of said league No. 87; thence south 500 varas; thence west 5000 varas; thence north 500 varas; thence east 5000 varas to the place of beginning, situated in Hockley and Cochran counties, Texas.

4. Further answering this defendant, Greer County, answers and says that it is not guilty of the wrongs, injuries and trespasses complained of in plaintiff's petition, and it denies all and singular the

allegations of plaintiff in said amended petition, and of this puts itself upon the country.

5. And for a further answer to plaintiff's said first amended original petition, the defendant, Greer County, comes and shows to the court that it is a body politic and corporate, duly created and organized as such and was such body politic and corporate on towit: the 18th day of July, 1887, and for many years prior thereto and is now such body politic and corporate. This defendant further avers that the patents issued to this defendant on towit: July 18th, 1887, were in all respects valid and legal patents and were issued in conformity to the authority and direction of the law-making department of the State of Texas, towit; by virtue of divers and sundry acts of the legislature of the State of Texas, and upon the issuance and delivery of said patents a full fee simple title to the lands described in plaintiff's petition was vested in this defendant, Greer County, by the terms of said patents. This defendant further says that said patents so issued, as aforesaid to this defendant, were issued by the plaintiff, The State of Texas, with full knowledge of the rights of this defendant to said
8 land; that this defendant at the time of the issuance of said patents was entitled to the amount of land therein embraced under the laws of the State of Texas; that it accepted said patents in good faith, as it had a right to do under and by virtue of the laws of the State of Texas; and that it now holds the same as a corporate entity in good faith, and so held the same at the time this suit was instituted. This defendant further avers that it has done no act, either of omission or commission, since the issuance of said patents, whereby any rights of forfeiture have accrued to the plaintiff herein, The State of Texas; that it received said lands for the purpose of public education and the maintenance of a system of public free education, and that under the constitution and the laws of Texas, under which said lands were donated to this defendant it, this defendant, Greer County, became the owner by full title of said lands and had the right of free and unlimited disposition thereof.

This defendant, Greer County, shows to the court that at and before the issuance of said patents and subsequent thereto, the plaintiff herein, The State of Texas, claimed that the territory and lands embraced within the geographical limits of this defendant was a part and parcel of the State of Texas, notwithstanding the fact that long prior to the year 1860 and continuously thereafter down to the present time said lands and domain embraced within the limits of defendant were claimed by the United States of America. This defendant shows that by virture of a law of the Congress of the United States of America, towit, about the year 1890, a suit in equity was instituted in the Supreme Court of the United States at the city of Washington against the State of Texas, styled "The United States *vs.* The State of Texas," which suit thereafter was duly brought to trial, towit: in the year 1895, and it was ordered, adjudged and decreed by said court in said suit, said court then and there having

full jurisdiction both of the subject matter and of the parties, that said lands embraced within the geographical limits of this
9 defendant did not belong to the State of Texas, but were of right the property of The United States of America, the plaintiff in said suit, and thereupon, towit: on the — day of ——, 189–, the plaintiff herein, through its proper legislative department did authorize and direct the attorney general of said State of Texas to institute and prosecute this suit for the purpose of canceling said patents and of recovering the lands therein granted to this defendant, and this suit has been instituted, as this defendant is informed and believes and so avers, by virture of said legislative action of the plaintiff State.

This defendant, Greer County, avers that if the fact as to the ownership of the lands embraced within its geographical limits of this defendant was unknown to plaintiff, it was equally unknown to defendant, and plaintiff had an equal or superior information or means of knowledge as to such ownership as to that possessed by defendant; or if the fact of ownership was doubtful from its own nature, which is not admitted by this defendant, then this defendant says that it acted in this transaction throughout in good faith, and it denies that a court of equity can interfere in behalf of plaintiff as sought in this action. This defendant further avers that it practiced no deceit or fraud upon plaintiff in obtaining said lands and that the plaintiff is estopped by her own action to deny the right and title to this defendant in and to the lands sued for, in that this defendant, at the instance of plaintiff accepted said lands in good faith, and has administered the same and applied the same, or their proceeds, to the purposes for which the donations were made and it would be contrary to equity and wholly unjust for plaintiff now to attempt to undo its acts in the premises by reason of its own mistake.

This defendant, Greer County, further avers that the plaintiff is charged in law and in equity with full knowledge at the time of the issuance of said patents and the grant of said lands to this defendant, that the lands lying within the geographical limits of this defendant did not belong to plaintiff, but were part and parcel of the public lands of the United States of America. And this defendant
10 further avers that if the right and title to said lands lying within the geographical limits of this defendant were in dispute, such fact, long anterior to the issuance of said patents and the donation of said lands was well known to the plaintiff as well as to the executive and legislative departments of the plaintiff, The State of Texas, and that in making said grants to this defendant, it, the plaintiff, acted with full knowledge and information that said lands and geographical limits might not be part and parcel of the State of Texas.

Wherefore this defendant says that this suit on behalf of plaintiff to cancel the patents, as set forth in plaintiff's petition and to recover the lands therein is violative of the Constitution of the United

States in this, that it is an attempt on the part of the State of Texas through her executive, legislative and judicial departments to impair the obligations of the contract solemnly entered into between the plaintiff and the defendant; and it is further violative of the Constitution of the United States in this, that this suit is an attempt upon the part of the State of Texas through all its departments, executive, legislative and judicial to take the private property of this defendant for public use without just compensation paid therefor; and all this the defendant stands ready to verify.

6. Wherefore this defendant comes and prays the court that plaintiff take nothing by its suit and that this defendant have and recover its judgment or decree over against the plaintiff quieting the title of this defendant to the lands and premises herein sued for. Defendant further prays that it have and recover its costs against the plaintiff, and for such other and further relief, to which it may show itself entitled.

CLARK & BOLINGER,
H. N. ATKINSON,
Att'ys for Greer County, Defendant.

(Endorsed:) No. 16,142. The State of Texas *vs.* Greer County *et al.* Answer of defendant Greer County. Filed Dec. 18, 1900. Jas. P. Hart, clerk.

11 *Plaintiff's First Supplemental Petition.*

Filed December 18th, 1900.

In the District Court of Travis County, Texas, 53rd Judicial District.

THE STATE OF TEXAS
vs.
GREER COUNTY ET AL. } No. 16142.

Now comes the State of Texas by T. S. Smith, attorney general, and files this her first supplemental petition by way of answer to the first amended original answer of the defendant, Greer County, and also to the first amended original answer of the defendants, the heirs and executors of William Cameron, deceased, and plaintiff demurs and excepts to so much of said amended answers as sets up in defense of plaintiff's right to recover, that the State of Texas is estopped by her action as set up in said amended answers, from suing for and recovering the land herein sued for; and plaintiff says that the facts set up in said amended answers, by way of estoppel, are insufficient in law, and do not constitute an estoppel upon the plaintiff, and of this she prays the judgment of the court.

And plaintiff further specially excepts to so much of the first amended original answer of the defendants, the heirs and executors

of William Cameron, deceased, as sets up that the said Wm. Cameron was, or that Strain & Swinburne were innocent purchasers for value without notice, of the lands sued for herein, and claimed by the defendant, the heirs and executors of William Cameron, deceased; and the plaintiff says that the facts set up in said first amended original answer, as a basis for said plea of innocent purchaser without notice on the part of the said William Cameron, are insufficient in law, and of this she prays the judgment of the court.

And plaintiff further specially excepts to so much of the first amended original answers of all of the said defendants, as pleads in reconvention in this suit the title of said defendants, and as
12 prays a judgment in this court against plaintiff quieting their title to said lands.

Plaintiff says that she sues herein as a sovereign State, and that the defendants are not entitled, by way of pleading in reconvention, to an affirmative judgment against the State quieting their title to the lands sued for, or for any other affirmative relief, save and except for costs, in case the State should fail in her said suit, and of this plaintiff prays the judgment of the court.

T. S. SMITH,
Attorney General, and
T. S. REESE,
Assistant Attorney General,
Attorneys for Plaintiff.

(Endorsed:) No. 16,142. The State of Texas, *vs.* Greer County *et al.* Plaintiff's first supplemental petition. Filed Dec. 18th, 1900. Jas. P. Hart, clerk.

Findings of Fact & Conclusions of Law by the Court.

Filed May 2nd, 1901.

THE STATE OF TEXAS *vs.* GREER COUNTY ET AL. } Cause Tried in the District Court, 26th Judicial District.

Conclusions of fact found by the court upon a trial of the cause against Greer county, there having been a severance upon the trial.

In this cause, originally instituted against Greer county, Oklahoma Territory, and the heirs, devisees and executors of Wm. Cameron, deceased, Greer county disclaimed as to all the land sued for except 7236 acres, described in its amended answer, and the executors, heirs and devisees of Wm. Cameron, deceased, dis-
13 claimed as to the 7236 acres, claiming the balance, 10,476 acres. Upon the trial there was, by agreement, a severance as between Greer county on the one part, and the heirs and devisees

and executors of Wm. Cameron, deceased, on the other. The cause as to Greer county was tried upon an agreed statement of facts, which I have adopted as my conclusions of fact in said cause, as follows:

In this case for the purpose of a trial, the following statement of facts is agreed upon by the parties:

I.

The land sued for comprises four leagues in Hockley and Cochran counties, and was granted to Greer county, as an organized county of the State of Texas, under the provision of the general laws of the State granting four leagues of land to each county of the State for school purposes.

II.

Patents (five in number) issued to Greer county July 18th, 1887, being Nos. 519, 520, 521, 522 and 523, vol. 24. The original or certified copies of such patents may be introduced in evidence by either party, and for any purpose deemed advisable.

III.

7236 acres of said land *is* now claimed by Greer county, Oklahoma Territory, under and by virtue of said patents to Greer county, Texas; said 7236 acres *is* described as follows: 7236 acres of land off the north end of the Greer County school land leagues; consisting of all that part (the south part) of league No. 109, which is patented to Greer county by patent No. 523, vol. 24, consisting of 13,354,549 square varas of land, and all of league No. 88 of 4428 acres, and the balance of said 7236 acres off the north side of league No. 87, as follows: Beginning at the N. E. corner of said league No. 87, thence south 500 varas; thence west 5000 varas; thence north 500 varas; thence east 5000 varas to the place of beginning, situated in Hockley and Cochran counties, Texas.

IV.

The balance of said four leagues is claimed by the heirs and devisees of Wm. Cameron, deceased, under and by virtue of a
14 certain deed of conveyance thereof to Wm. Cameron from Strain & Swinburne, dated January 17th, 1888. Strain & Swinburne claimed title thereto under and by virtue of a deed of conveyance to them, from and on the part of Greer county, Texas, by the county judge of said Greer county, Texas, dated January 12th, 1888. The land referred to is described as follows:

10,476 acres of land off the south end of the Greer County school land leagues as follows: Beginning at the S. E. corner of that portion of league No. 85, which is patented to Greer county by patent No. 520, vol. 24; thence N. at 2329½ varas the N. E. corner of said

league No. 85, at 7329½ varas the N. E. corner of league No. 86, at 11829 45/100 varas a point on the east line of league No. 87; thence W. 5000 varas; thence south 11829 45/100 varas; thence east 5000 varas to the place of beginning, so as to include all that part of league No. 85 that is patented to Greer county,—all of league No. 86, and the balance of the 11,476 acres out of the south side of league No. 87, situated in Hockley and Cochran counties, Texas.

V.

The defendant Greer County is now an organized county of Oklahoma Territory, one of the Territories of the United States, and comprises the same territory which was at one time organized under the laws of the State of Texas, as Greer county, Texas, to which the aforesaid four leagues of land were patented.

VI.

Wm. Cameron, the grantee in the above described deed of conveyance, died testate on the 6th day of February, 1898. By the terms of his will, which was duly probated in the probate court of McLennan county, Texas, the other defendants were made executors of his will and devisees of his estate, and are also his heirs at law, as set out in plaintiff's amended petition, and as such they claim title to the aforesaid land.

VII.

The territory now organized as Greer county, Oklahoma Territory was, up to the date hereinafter set out, claimed by the State
15 of Texas to be a part of her territory and up to said date, jurisdiction and control was claimed and exercised over the same by the State of Texas. The Government of the United States did not, except in so far as was done by the act making Greer county a part of the northern judicial district of Texas, as hereinafter shown, concede said claim, but during all of said time claimed said territory as a portion of her own territory outside of the limits of the State of Texas, and the legislative and executive departments of the said State had full knowledge of said claim prior to the issuance of the patents mentioned herein. Attempts were made from time to time to settle the dispute between the State of Texas and the United States as to the ownership of this territory, without success.

VIII.

Greer county, comprising the aforesaid territory, was created by the legislature of the State of Texas by the act of February 8th, 1860, and was organized as a county under the provisions of said act on the — day of ——, A. D. 1886.

IX.

By an act of the Congress of the United States of May 2nd, 1890, the Attorney General of the United States was directed to commence in the name and on behalf of the United States, a prosecute to final determination, a proper suit in equity in the Supreme Court of the United States against the State of Texas, setting forth the title and claim of the United States to the tract of lands lying between the North and South forks of Red river, where the Indian Territory and the State of Texas adjoin, east of the 100th meridian of longitude, and claimed by the State of Texas as within its boundary and a part of its land, and designated on its maps as Greer county.

Under the authority of this act a suit was instituted in the Supreme Court of the United States, styled The United States *vs.* The State of Texas, in which the State of Texas appeared by her attorney general and other counsel.

16 X.

At the October term, 1895, a decree was rendered in said cause as follows:

"This cause having been submitted upon the pleadings, proofs and exhibits, and the court being fully advised, it is ordered, adjudged and decreed that the territory east of the 100th meridian of longitude, west and south of the river now known as the North fork of Red river, and north of a line following westward, as prescribed by the treaty of 1819, between the United States and Spain, the course, and along the south bank both of Red river and of the river known as the Prairie Dog Town fork or South fork of Red river, until such line meets the 100th meridian of longitude—which territory is sometimes called Greer county,—constitutes no part of the territory properly included within or rightfully belonging to Texas at the time of the admission of that State into the Union, and is not within the limits nor under the jurisdiction of that State, but is subject to the exclusive jurisdiction of the United States of America. Each party will pay its own costs."

After this decree was rendered, the State of Texas exercised no further control or jurisdiction of said territory, and the same was afterwards organized into Greer county, Oklahoma Territory, and as a part of said Territory. The territory described in said decree is the same as was embraced in Greer county, Texas, as created and organized as aforesaid.

The recitals in the report of said cause of United States *vs.* Texas, as reported in the 162 volume of the United States Supreme Court Reports, and the printed record in said cause, may be used as full evidence of the facts therein stated, as to the institution of the suit, the appearance and pleadings of the parties and the decree of the court, without the necessity of producing certified copies thereof from the records of said court."

In addition to the facts agreed upon, as shown in the foregoing

statement, I find that the patents referred to in the statement, for the four leagues of land, purport on their face to have been issued by virtue of an act of the legislature of the State of Texas, approved April, 7th, 1883, chapter 55, General Laws 1883.

17 *Conclusions of Law.*

From the foregoing facts I conclude as a matter of law that the plaintiff is entitled to recover of the defendant Greer County so much of said land in controversy to which it files a disclaimer, because of such disclaimer, and is entitled to recover the balance of said land to which said defendant pleads not guilty, as is set out in the answer of said defendant, because:

(1.) It having been judicially determined by the Supreme Court of the United States in the suit between said United States and the State of Texas, involving the title to what is known as Greer county, that said Greer county is not and never was part of the State of Texas, then the act of the legislature of Texas of ——, 1860, creating said territory into Greer county, as a part of said State, was beyond the powers conferred upon said legislature by the constitution of this State and was beyond the power of the people of Texas to incorporate the same into a county of the State of Texas, either by the constitution or the act of the legislature.

(2.) Even if the act of the legislature creating Greer county was not unconstitutional nor beyond the powers of said legislature, still the act of —— —, 1883, of said legislature, under which the patents to the land in controversy were issued by the officers of the State of Texas, only authorizes the issuance of such patents to counties of *this* State which would not include Greer county, and the act of granting patents to a county whose territory was entirely beyond the bounds of the State of Texas was unauthorized and beyond the powers of the officers issuing said patents, and the fact that said officers in issuing said patents and the legislature in creating Greer county acted in good faith and in the belief that said territory was a part of the State of Texas, would not affect said acts, but the same were void and said patents are void for want of power in said officers to issue them. The lands in controversy were not issued direct by the legislature to Greer county nor to the territory then known and recognized as Greer county, Texas, but the patents for the same

18 were issued by the agents and officers of the State of Texas under a general law authorizing the issuance of such patents to each county of *this* State which never included Greer county. The constitution of this State authorized and provided for the creation of the territory of this State into counties by the legislature, and the setting apart of four leagues of land to each of said counties for free school purposes, but by implication, if it does not directly, limits the power of the legislature in granting such lands to counties of *this* State. The reasons for the statute and constitu-

tional provisions would only apply to counties which were a part of the State of Texas.

The patents being void, all parties are chargeable with notice of their invalidity and there could be no innocent purchaser of such lands.

Judgment for plaintiff for lands in controversy. To which conclusions of law and judgment the defendant Greer County in open court excepts, and gives notice of appeal to the court of civil appeals for the third supreme judicial district of Texas.

R. E. BROOKS,
District Judge.

(Endorsed:) 16,142. The State of Texas *vs.* Greer County *et al.* Findings of fact and conclusions of law by the court as to def't Greer County. Filed May 2nd, 1901. Jas. P. Hart, clerk.

Agreed Statement of Facts.

Filed December 18th, 1900.

In the District Court of Travis County, Texas, 26th Judicial District.

THE STATE OF TEXAS
vs.
GREER COUNTY and Others.

In this case, for the purpose of a trial, the following statement of the facts is agreed upon by the parties:

19 I.

The land sued for comprises four leagues in Hockley and Cochran counties, and was granted to Greer county, as an organized county of the State of Texas, under the provisions of the general laws of the State granting four leagues of land to each county of the State for school purposes.

II.

Patents (five in number) issued to Greer county July 18th, 1887, being Nos. 519, 520, 521, 522 and 523, vol. 24. The original or certified copies of such patents may be introduced in evidence by either party for any purpose deemed advisable.

III.

7236 acres of said land is now claimed by Greer county, Oklahoma Territory under and by virtue of said patents to Greer county Texas; said 7236 acres is described as follows: 7236 acres of land

off the north end of the Greer County school land leagues; consisting of all that part (the south part) of league No. 109, which is patented to Greer county by patent No. 523, vol. 24, consisting of 13,354,549 square varas of land, and all of league No. 88 of 4428 acres and the balance of said 7236 acres off the north side of league No. 87, as follows: Beginning at the N. E. corner of said league No. 87; thence south 500 varas; thence west 5000 varas; thence north 500 varas; thence east 5000 varas to the place of beginning, situated in Hockley and Cochran counties, Texas

IV.

The balance of said four leagues is claimed by the heirs and devisees of Wm. Cameron, deceased, under and by virtue of a certain deed of conveyance thereof to Wm. Cameron from Strain & Swinburne, dated January 17th, 1888. Strain & Swinburne claimed title thereto under and by virtue of a deed of conveyance to them from and on the part of Greer county, Texas, by the county judge of said Greer county, Texas, dated January 12th, 1888. The land referred to is described as follows:

10,476 acres of land off of the south end of Greer County school land leagues as follows: Beginning at the S. E. corner of that portion of league No. 85, which is patented to Greer county by patent No. 520, vol. 24; thence N. at 2329½ varas the N. E. corner of said league No. 85 at 7329½ varas the N. E. corner of league No. 86, at 11,829 45/100 varas a point on the east line of league No. 87; thence west 5000 varas; thence south 11,829 45/100 varas; thence east 5000 varas to the place of beginning, so as to include all that part of league No. 85 that is patented to Greer county,—all of league No. 86, and the balance of the 10,476 acres out of the south side of league No. 87, situated in Hockley and Cochran counties, Texas.

V.

The defendant Greer County is now an organized county of Oklahoma Territory, one of the Territories of the United States, and comprises the same territory which was at one time organized under the laws of the State of Texas, as Greer county, Texas, to which the aforesaid four leagues of land were patented.

VI.

Wm. Cameron, the grantee in the above described deed of conveyance, died testate on the 6th day of Feb'y. 1898. By the terms of his will, which was duly probated in the probate court of McLennan county, Texas, the other defendants were made executors of his will and devisees of his estate, and are also his heirs at law, as set out in plaintiff's amended petition, and as such they claim title to the aforesaid land.

VII.

The territory now organized as Greer county, Oklahoma Territory, was, up to the date hereinafter set out, claimed by the State of Texas to be a part of her territory and up to said date, jurisdiction and control was claimed and exercised over the same by the State of Texas. The Government of the United States did not, except in so far as was done by the act making Greer Co. a part of the northern judicial dist. of Texas, as hereinafter shown, concede said claim, but during all of said time claimed said territory as a portion of her own territory, outside of the limits of the State of Texas, and
21 the legislative and executive departments of the said State had full knowledge of said claim prior to the issuance of the patents mentioned herein. Attempts were made from time to time to settle the dispute between the State of Texas and the United States, as to the ownership of this territory, without success.

VIII.

Greer county, comprising the aforesaid territory, was created by the legislature of the State of Texas by the act of February 8th, 1860, and was organized as a county under the provisions of said act on the — day of——, A. D., 1886.

IX.

By an act of the Congress of the United States of May 2nd, 1890, the Attorney General of the United States was directed to commence in the name and on behalf of the United States, and prosecute to a final determination, a proper suit in equity in the Supreme Court of the United States against the State of Texas, setting forth the title and claim of the United States to the tract of land lying between the North and South forks of Red river, where the Indian Territory and the State of Texas adjoin, east of the 100th degree of longitude, and claimed by the State of Texas as within its boundary and a part of its land, and designated on its maps as Greer county.

Under the authority of this act a suit was instituted in the Supreme Court of the United States, styled The United States *vs.* The State of Texas, in which the State of Texas appeared by her attorney general and other counsel.

X.

At the October term, 1895, a decree was rendered in said cause as follows:

"This cause having been submitted upon the pleadings, proofs and exhibits, and the court being fully advised, it is ordered, adjudged and decreed that the territory east of the 100th meridian of longitude, west and south of the river now known as the North fork of Red river, and north of a line following westward, as prescribed

by the treaty of 1819 between the United States and Spain,
22 the course, and along the south bank, both of Red river and of the river now known as the Prairie Dog Town fork or South fork of Red river, until such line meets the 100th meridan of longitude,—which territory is sometimes called Greer county,—constitutes no part of the territory properly included within or rightfully belonging to Texas at the time of the admission of that State into the Union, and is not within the limits nor under the jurisdiction of that State, but is subject to the exclusive jurisdiction of the United States of America. Each party will pay its own costs."

After this decree was rendered, the State of Texas exercised no further control or jurisdiction of said territory, and the same was afterwards organized into Greer county, Oklahoma Territory, and as a part of said Territory. The territory described in said decree is the same as was embraced in Greer county, Texas, as created and organized as aforesaid.

The recitals in the report of said cause of The United States *vs.* Texas, as reported in the 162 volume of United States Supreme Court Reports, and the printed record in said cause may be used as full evidence of the facts therein stated, as to the institution of the suit, the appearance and pleadings of the parties and the decree of the court, without the necessity of producing certified copies thereof from the records of said court.

Any other evidence may be introduced by either party pertinent to the issues and not contradictory of the facts herein agreed upon, including any and all acts of the legislature of the State of Texas or the Congress of the United States, relating to the subject matter of this suit, including the act of Congress making Greer Co. a part of the northern district of the State of Texas.

——— ———,
Attorney General, and
T. S. REESE,
Assistant Attorney General,
Attorneys for Plaintiff.
23 L. C. ALEXANDER,
H. N. ATKINSON,
Attorneys for Defendants, the Heirs of Wm. Cameron.
H. N. ATKINSON,
Att'y for Greer Co.

(Endorsed:) No. 16,142. The State of Texas *vs.* Greer Co. *et al.* Agreed statement of facts. Filed Dec. 18, 1900. Jas. P. Hart, clerk.

Judgment, April 29th, 1901.

THE STATE OF TEXAS
vs.
GREER COUNTY ET AL. } No. 16142.

On this, the 29th day of April, 1901, came on to be heard this cause, when came the parties, plaintiff and defendant by counsel and by agreement of parties made in open court;

It is ordered and adjudged that a severance be had of the cause against Greer County from that against the other defendants, to wit: the heirs and executors of Wm. Cameron, deceased, and that the said cause against Greer County be tried separate from that against the other defendants, the heirs and executors of Wm. Cameron, deceased, which is agreed to by the State and all of the defendants;

And thereupon came on to be heard the cause as against Greer County defendant alone, when came the parties by counsel, both plaintiff and defendant, and announced ready for trial, and no jury being demanded by either party, the cause was submitted to the court, and the pleadings, evidence and argument of counsel having been heard by the court and fully considered,

24 It is considered by the court that the plaintiff, The State of Texas, ought to have judgment for that portion of the land sued for and described in plaintiff's petition, and claimed by defendant Greer County, which is hereinafter more fully described;

It is therefore ordered, adjudged and decreed by the court that the plaintiff, The State of Texas, do have and recover of and from the defendant Greer County, an organized county of Oklahoma Territory, the title and possession of the following described lands, viz:

A portion of the four leagues of school lands for which patents were issued by the State of Texas to Greer county, Texas, on July 18th, 1887, that portion of said four leagues of school land for which judgment is here rendered for the State of Texas is described as follows:

Seven thousand two hundred and thirty six (7236) acres of land off the north end of the Greer County school land leagues; consisting of all that part (the south part) of league No. 109, in Cochran county, Texas, which is patented to Greer county by patent No. 523, vol. 24, consisting of 13,354,549 square varas of land, as fully described in said patent.

Also all of league No. 88 of 4428 acres in Hockley county, Texas, which said league is fully described in patent No. 522, vol. 24, issued by the State of Texas to Greer county;

And the balance of said 7236 acres is off the north side of league No. 87, in Cochran county, Texas, patented to Greer county by the State of Texas, by patent No. 521, vol. 24, that portion of said league

No. 87 herein adjudged to the State of Texas, is fully described as follows: Beginning at the N. E. corner of said league No. 87; thence S. 500 varas; thence W. 5000 varas; thence N. 500 varas; thence E. 5000 varas to the beginning.

It is further ordered, adjudged and decreed by the court, that the patents whereby said lands were granted by the State of Texas to Greer county, as aforesaid, in so far as the said 7236 acres of land above described, is granted thereby, be and the same are hereby cancelled and annulled.

It is further ordered, adjudged and decreed that the plaintiff The State of Texas, do have and recover of the defendant Greer County, all costs in this behalf incurred; that is the costs incurred in the entire suit before severance, and the costs incurred in this suit against Greer County after severance; but it is expressly provided herein that the costs adjudged herein against the defendant Greer County, shall not include the cost of making the executors and heirs of Wm. Cameron, deceased, parties to this suit, nor the costs of taking depositions herein, nor any of the costs incurred after severance in the cause as against the heirs and executors of Wm. Cameron, deceased;

It is further ordered, adjudged and decreed that the plaintiff take nothing as to her claims for rents and damages, as to which defendant may go hence.

It is further ordered, adjudged and decreed that as against the aforesaid defendant, Greer County, the plaintiff do have and recover of said defendant on its disclaimer, the title and possession of all of said four leagues of Greer County school lands, described in plaintiff's petition and covered by patents Nos. 523, vol. 24; No. 521, vol. 24; No. 519, vol. 24; No. 522, vol. 24, and No. 520, vol. 24, all dated July 18th, 1887, not hereinbefore adjudged to the State of Texas by this judgment; and that plaintiff have her writs of possession and execution as often and as many as may be necessary; to which judgment of court and conclusions of law, the defendant excepts, and in open court gives notice of appeal to the court of civil appeals for the third supreme judicial district of Texas.

Petition of Greer County for Writ of Error.

Filed April 28th, 1902.

STATE OF TEXAS, }
County of Travis. }

To the Honorable James P. Hart, clerk of the district courts of Travis county, Texas:

Now comes Greer County, an organized county of the Territory of Oklahoma, and respectfully shows that in cause No. 16,142, wherein The State of Texas was plaintiff, and Greer County was defendant

(other defendants having severed) which cause was pending in said Travis county and in the 26th judicial district of Texas, on the 29th day of April, 1901, judgment was rendered in favor of the State of Texas against said Greer County for a recovery of a portion of the four leagues of school lands, for which patents were issued by the State of Texas to Greer county, Texas on July 18th, 1887, which lands were described as follows:

7,236 acres of land off the north end of the Greer County school leagues, consisting of the south part of league No. 109 in Cochran, county, Texas, which is patented to Greer county by patent No. 523, vol. 24, consisting of 13,354,549 sq. varas of land, as fully described in said patent. Also all of league No. 88 of 4428 acres in Hockley county, Texas, which said league is fully described in patent No. 522, vol. 24, issued by the State of Texas to said Greer county, and the balance of said 7,236 acres is off the north side of league No. 87 in Cochran county, Texas, patented to Greer county by the State of Texas, by patent No. 521, vol. 24; that portion of said league No. 87 herein adjudged to the State of Texas, is fully described as follows:

Beginning at the N. E. corner of said league No. 87; thence S. 500 varas; thence W. 5000 varas; thence N. 500 varas; thence E. 5000 varas to beginning, which judgment also cancelled the patents to said land, and adjudged costs against Greer County as therein set forth, and which judgment also awarded to the State of Texas on the disclaimer of said Greer County, all the other lands pat-
27 ented by the State of Texas to said Greer County on the 18th day of July, 1887, with writ of possession and execution.

Your petitioner respectfully shows that in and about the rendition of said judgment, certain errors were committed, and it desires to remove this cause to the court of civil appeals for the third supreme judicial district of Texas for revision and correction. Petitioner further shows that Hon. C. K. Bell, who resides in Austin, Texas, is the attorney general of the State of Texas, upon whom service of citation in error may be made.

Your petitioner files herewith a bond for costs, secured, conditioned and payable as the law directs, and prays that citation in error issue, and it further prays for general relief.

CLARK & BOLINGER,
H. N. ATKINSON,
Attorneys for Petitioner.

(Endorsed:) No. 16,142, The State of Texas *vs.* Greer County *et al.* Petition of Greer Co. for writ of error. Filed Ap'l 28th, 1902. Jas. P. Hart, clerk.

Writ of Error Bond.

Filed April 28th, 1902.

THE STATE OF TEXAS } No. 16142. Cause Pending in the 26th
vs. } Judicial District Court, Travis County,
GREER COUNTY ET AL. } Texas.

Whereas, in the above entitled and numbered cause, on the 29th day of April, 1901, judgment was rendered in favor of the State of Texas against said Greer County for a recovery of a portion of the four leagues of school lands, for which patents were issued by the State of Texas to Greer county, Texas, on July 18th, 1887, which lands were described as follows:

7,236 acres of land off the north end of the said Greer County
28 school leagues, consisting of the south part of league No. 109 in Cochran county, Texas, which is patented to Greer county by patent No. 523, vol. 24, consisting of 13,354,549 square varas of land, as described in said patent. Also all of league No. 88 of 4428 acres in Hockley county, Texas, which said league is fully described in patent No. 522, vol. 24, issued by the State of Texas to said Greer county, and the balance of said 7236 acres is off the north side of league No. 87 in Cochran county, Texas, patented to Greer county by the State of Texas, by patent No. 521, vol. 24; that portion of said league No. 87 herein adjudged to the State of Texas is fully described as follows:

Beginning at the N. E. corner of said league No. 87; thence S. 500 varas; thence W. 5000 varas; thence N. 500 varas; thence E. 5000 varas to beginning, which judgment also cancelled the patents to said land, and adjudged costs against Greer County, as therein set forth, and which judgment also awarded to the State of Texas on the disclaimer of said Greer County, all the other lands patented by the State of Texas to said Greer county on the 18th day of July, 1887, with writ of possession and execution.

And whereas, the said Greer County, defendant, is desirous of removing said cause to the court of civil appeals for the third supreme judicial district of Texas for revision and correction.

Now, therefore, we Greer County, Oklahoma, as principal and —— —— and —— —— as sureties, acknowledge ourselves to be indebted to the State of Texas in the sum of $300.00 being double the amount fixed by the clerk of said district court, as probable costs of the district court, the court of civil appeals and the supreme court, conditioned that the said Greer County, Oklahoma, plaintiff in error herein, shall prosecute its writ of error with effect, and shall pay all the costs which have accrued in the court below, and which may accrue in the court of civil appeals and the supreme court.

In witness whereof, we have hereto set our hands at Waco,
29 Texas, this 26th day of April, 1902.

GREER COUNTY, OKLAHOMA,
Per H. N. ATKINSON, *Att'y.*
H. N. ATKINSON,
GEO. CLARK,
D. C. BOLINGER, *Sureties.*

Approved Ap'l 28, 1902.
JAS. P. HART, *Clerk.*

THE STATE OF TEXAS, }
County of McLennan, }

I, R. V. McClain, clerk of the district court in and for said county do hereby certify that H. N. Atkinson, Geo. Clark and D. C. Bolinger, whose names appear signed to the annexed bond, are in my opinion good and ample security for the amount therein specified. That they have property in said county subject to execution of a larger amount, and that if said bond was offered to me for approval the same would be accepted and approved.

To certify which I hereunto set my hand and impress of my official seal at office in the city of Waco, on the 26 day of April, 1902.

[SEAL.]

R. V. McCLAIN,
Clerk District Court, McLennan County,
By CHAS. E. MOORE, *Deputy.*

(Endorsed:) No. 16,142. The State of Texas *vs.* Greer County *et al.* Writ of error bond. Filed Ap'l 28, 1902. Jas. P. Hart, clerk.

Citation in Error to the State of Texas.

Issued April 30th, 1902.

The State of Texas to the sheriff or any constable of Travis county, Greeting:

Whereas, in a certain cause pending in the district court of Travis county, Texas, in and for the 26th judicial district of Texas,
30 No. 16,142, on the docket thereof, wherein The State of Texas is plaintiff and Greer County *et al.* are defendants, a judgment was rendered on the 29th day of April, 1901, in favor of the State of Texas against said Greer County, for the recovery of a portion of four leagues of school land for which patents were issued by the State of Texas to Greer county, Texas, on July 18th, 1887, which lands were described as follows:

7,236 acres of land off the north end of the Greer County school

leagues, consisting of the south part of league No. 109, in Cochran county, Texas, which is patented to Greer county by patent No. 523, vol. 24, consisting of 13,354,549 sq. varas of land as fully described in said patent. Also all of league No. 88 of 4428 acres in Hockley county, Texas, which said league is fully described in patent No. 522, vol. 24, issued by the State of Texas to said Greer county, and the balance of said 7,236 acres is off the north side of league No. 87 in Cochran county, Texas, patented to Greer county by the State of Texas by patent No. 521, vol. 24; that portion of said league No. 87 herein adjudged to the State of Texas is fully described as follows: beginning at the N. E. corner of said league No. 87; thence S. 500 varas; thence W. 5000 varas; thence N. 500 varas; thence E. 5000 varas to beginning, which judgment also cancelled the patents to said land, and adjudged costs against Greer County as therein set forth, and which judgment also awarded to the State of Texas on the disclaimer of said Greer County, all the other lands patented by the State of Texas to said Greer County on the 18th day of July, 1887, with writ of possession and execution:

And whereas, the defendant, Greer County, having given notice of appeal from said judgment and having filed its petition for writ of error and perfected its appeal by giving bond as required by law, bearing date April 28, 1902, which petition has been granted removing said cause to the court of civil appeals for the 3rd supreme judicial district of Texas for revision and correction:

Therefore, you are hereby commanded to summon forthwith the said The State of Texas, defendant in error, to appear before the honorable court of civil appeals for the third supreme judicial
31 district of Texas, within 60 days from date of service of this citation and defend the writ of error before said court at Austin, in the county of Travis, State of Texas.

Herein fail not, but make due return of this citation within ten days from date hereof, with your return endorsed thereon, showing how you have executed the same.

Given under my hand and seal of office, at Austin, Texas, this the 30th day of April, A. D. 1902.

[SEAL.] JAS. P. HART,
Clerk District Court, Travis County, Texas.

(Endorsed:) No. 16,142. The State of Texas *vs.* Greer County *et al.* Citation in error to the State of Texas. Issued April 30th, 1902. Jas. P. Hart, cl'k dist. ct. T. C. Tex. Filed May 5th, 1902. Jas. P. Hart, clerk, by D. J. Pickle, deputy.

Sheriff's Return.

Came to hand on the 30th day of April, A. D. 1902, at 10 o'clock a. m. and executed on the 30th day of April, 1902, by delivering to the within named defendant in error, The State of Texas, (by deliv

ering to C. K. Bell, attorney general of the State of Texas, in person) a true copy of this writ.

J. M. DAVIS,
Sheriff Travis County, Texas,
By J. M. FOX, *Deputy.*

Fee & mileage, $1.

Assignment of Errors.

Filed June 11th, 1902.

THE STATE OF TEXAS *vs.* GREER COUNTY ET AL. } No. 16142. On Error from the District Court, 26th Judicial District.

In the above numbered and entitled cause comes the defendant, Greer County, having perfected writ of error in said cause to
32 the court of civil appeals, third supreme judicial district, and here now files its assignment of errors as follows, towit:

I.

The district court erred in its conclusion of law, and in awarding judgment to the plaintiff for the recovery of the balance of the land, to which defendant plead not guilty, and in holding that because the Supreme Court of the United States had judicially determined that Greer county was not, and never had been a part of the State of Texas, and that therefore the act of the legislature of the State of Texas, creating such territory into Greer county as a part of Texas, was beyond the powers conferred upon said legislature by the constitution of the State, and was beyond the power of the people of Texas to incorporate the same into a county of the State of Texas, either by constitution or statute.

II.

The district court further erred in holding, that even if the act of the legislature of Texas, creating Greer county, was not unconstitutional, yet because the act of 1883 only authorized the issuance of such patents to counties in Texas, that this would not include Greer county, and the act granting patents to a county whose territory was entirely beyond the bounds of the State of Texas was unauthorized and beyond the powers of the officers issuing said patents, and that the good faith of the officers in issuing said patents to Greer county would not effect said acts; that the same are void for want of power in the officers to issue the patents.

III.

The district court further erred in its conclusion of law in holding that because the patents for the lands in controversy — not issued

by the legislature, but were issued by the agents and officers of the State of Texas under a general law, authorizing the issuance of such patents to each county of the State of Texas, that this never included Greer county, in that the constitution of Texas only authorized and provided for a division of the territory of Texas into counties by the legislature, and the setting apart of four leagues of land to
33 said county, which in effect limited the power of the legislature in granting such lands to counties of the State of Texas only.

IV.

The court further erred in holding that the patents were void, and that all parties were chargeable with notice of their invalidity.

V.

The judgment of the district court, 26th judicial district, is further erroneous because said judgment in the action of said court is violative of the Constitution in this, that the patents issued by the State of Texas to Greer county prior to 1895, and their acceptance by Greer county constituted a contract between the State of Texas and said Greer county within the meaning of the Constitution of the United States, and the judgment of the court is an impairment of the obligation of said contract so entered into between the State of Texas and Greer county.

Said judgment in the district court is further violative of the Constitution of the United States in that, by means thereof the State of Texas has seized and appropriated the private property of plaintiff in error for public use without just compensation therefor, the title of the lands in controversy having been vested only in plaintiff in error, Greer County, and the judgment of the court in effect invalidates this title and confiscates the property of Greer county to the State of Texas without just compensation.

VI.

The court further erred in rendering judgment for the State of Texas, and in cancelling the patents issued to plaintiff in error Greer County, because although after the decision of the Supreme Court of the United States in 1895, Greer county ceased to be a part of Texas, yet such judgment was in legal effect in so far as the rights of the parties to this litigation is concerned no more than if the territory of Greer county had been voluntarily ceded to the State of Texas by the United States; and if the parties to this litigation acted upon a mistake as to the ownership of Greer county, such mistake
34 was mutual, and relief in equity cannot be based upon a mutual mistake as to how matters may result in the future, honestly made by both parties, with full knowledge of all the facts.

Because of these errors, and others apparent of record, plaintiff in

error prays the court that the judgment of the lower court be reversed, and be here rendered for plaintiff in error.

CLARK & BOLINGER,
H. N. ATKINSON,
Attorneys for Plaintiff in Error.

(Endorsed:) No. 16,142. The State of Texas *vs.* Greer County *et al.* Assignment of errors. Filed June 11th, 1902. Jas. P. Hart, clerk by D. J. Pickle, deputy.

Bill of Costs.

THE STATE OF TEXAS *vs.* GREER COUNTY ET AL. } No. 16142.

To officers of court, Dr.

Clerk's costs.

	Doll.	Cts.
Docketing suit		.20
Entering appearances		.20
" motion		.15
" orders		4.50
Filing papers		5.25
Entering judgement- (2)		3.30
Issuing copy ints. & commission		3.25
Opening and filing depositions		.20
Approving bonds, (2)		3.00
Transcript		21.35
Addenda to transcript		3.30
35 Assessing damages		.50
Certificate to brief		.50
Transcript		21.00
Filing and certifying brief		.90
Taxing costs		.25
Total clerk's costs	$	67.85

Sheriff's & miscellaneous costs.

J. M. Davis, sheriff:

Venire fee		.50
Citation in error & mileage		1.00

J. B. Mobley, district clerk Lubbock county:

Court costs		32.60
Depositions estimated at		7.50
Total sheriff's & miscellaneous costs	$	41.60

Recapitulation.

Clerk's costs	$67.80
Sheriff's & micellaneous costs	41.60
Total	$109.45
Less amount deposited July 8, 1901, by Cameron heirs	33.95
Balance	$75.50

36 *Clerk's Certificate.*

THE STATE OF TEXAS, }
County of Travis. }

I, Jas. P. Hart, clerk of the district court within and for the county and State aforesaid, do hereby certify that the within and foregoing on 41 pages is a true and correct transcript of all the proceedings had in this court in cause No. 16,142, of The State of Texas *vs.* Greer County *et al.*, as the same appear of record and on file in this office.

Given under my hand and seal of office, at Austin, Texas, this the 25th day of June, A. D. 1902.

[SEAL.] JAS. P. HART,
Clerk District Court, Travis County, Texas.

(Endorsed:) No. 2901. Assignment. Greer county, plaintiff in error *vs.* The State of Texas, defendant in error. From the district court of Travis county, for the 26th judicial district of Texas. Applied for by H. N. Atkinson, attorney for plaintiff in error, on the 27th day of June, A. D. 1902, and delivered to the above named attorney on the 27th day of June, A. D. 1902. Jas. P. Hart, clerk of the district court of Travis county. Filed in court of civil appeals, third supreme judicial district, Austin, Texas, Jul- 5. 1902. R. H. Connerly, clerk.

37 *Opinion of the Court of Civil Appeals.*

Delivered January 14th, 1903.

GREER COUNTY, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error. } No. 2901.

Error from the district court of Travis county.

This is a suit by the State to recover from Greer county, in Oklahoma Territory, four leagues of land; and from a judgment in favor of the State, Greer county has appealed. The case was submitted

in the court below and is also submitted here on the following agreed facts:

1. The land sued for comprises four leagues in Hockley and Cochran counties, and was granted to Greer county as an organized county of the State of Texas, under the provisions of the general laws of the State, granting four leagues of land to each county of the State for school purposes.

2. Patents, (five in number) issued to Greer county July 18th, 1887; being Nos. 519, 520, 521, 522 and 523, vol. 24. The original or certified copies of such patents may be introduced in evidence by either party and for any purpose deemed advisable.

3. 7,236 acres of said land *is* now claimed by Greer county, Oklahoma Territory, under and by virtue of said patents to Greer county, Texas. Said 7,236 acres *is* described as follows: 7,236 acres of land off the north end of the Greer County school land leagues; consisting of all that part (the south part) of league No. 109, which is patented to Greer county by patent No. 523, vol. 24, consisting of 13,354,549 square varas of land, and all of league No. 88 of 4428 acres, and the balance of said 7,236 acres off the north side of
38 league No. 87, as follows: Beginning at the N. E. corner of said league 87; thence south 500 varas; thence west 5000 varas; thence north 500 varas; thence east 5000 varas to the place of beginning; situated in Hockley and Cochran counties, Texas.

4. The balance of said four leagues is claimed by the heirs and devisees of Wm. Cameron, deceased under and by virtue of a certain deed of conveyance thereof to Wm. Cameron from Strain & Swinburne, dated January 17, 1888. Strain & Swinburne claimed title thereto under and by virtue of a deed of conveyance to them from and on the part of Greer county, Texas, by the county judge of said Greer county, Texas, dated January 12, 1888. The land referred to is described as follows: 10,476 acres of land off of the south end of the Greer County school land leagues as follows: Beginning at the S. E. corner of that portion of league No. 85, which is patented to Greer county by patent No. 520, vol. 24; thence N. at 2329½ varas, the N. E. corner of said league No. 85; at 7,329½ varas the N. E. corner of league No. 86; at 11,829 45-100 varas, a point on the east line of league No. 87; thence W. 5000 varas; thence south 11,829 45-100 varas; thence east 5000 varas to the place of beginning, so as to include all that part of league No. 85 that is patented to Greer county, all of league No. 86, and the balance of the 11,476 acres out of the south side of league No. 87, situated in Hockley and Cochran counties, Texas.

5. The defendant Greer County is now an organized county of Oklahoma Territory, one of the Territories of the United States, and comprises the same territory which was at one time organized under the laws of the State of Texas as Greer county, Texas, to which the aforesaid four leagues of land were patented.

6. Wm. Cameron, the grantee in the above described deed of conveyance, died testate on the 6th day of February, 1898. By the

terms of his will, which was duly probated in the probate court of McLennan county, Texas, the other defendants were made executors of his will and devices of his estate, and are also his heirs at law, as set out in plaintiff's amended petition, and as such they claim title to the aforesaid land.

7. The territory now organized as Greer county, Oklahoma
39 Territory, was, up to the date hereinafter set out, claimed by the State of Texas to be a part of her territory, and up to said date jurisdiction and control was claimed and exercised over the same by the State of Texas. The Government of the United States did not, except in so far as was done by the act making Greer county a part of the northern judicial district of Texas, as herein after shown, concede said claim, but during all of said time claimed said territory as a portion of her own territory, outside of the limits of the State of Texas, and the legislative and executive departments of the said State had full knowledge of said claim prior to the issuance of the patents mentioned herein. Attempts were made from time to time to settle the dispute between the State of Texas and the United States, as to the ownership of this territory, without success.

8. Greer county, comprising the aforesaid territory, was created by the legislature of the State of Texas by the act of February 8th, 1860, and was organized as a county under the provisions of said act on the — day ——, A. D., 1886.

9. By an act of the Congress of the United States of May 2nd, 1890, the Attorney General of the United States was directed to commence, in the name and on behalf of the United States, and prosecute to a final determination, a proper suit in equity in the Supreme Court of the United States against the State of Texas, setting forth the title and claim of the United States to the tract of lands lying between the North and South forks of Red river, where the Indian Territory and the State of Texas adjoin, east of the 100th degree of longitude, and claimed by the State of Texas as within its boundary and a part of its land and designated on its maps as Greer county.

Under the authority of this act, a suit was instituted in the Supreme Court of the United States, styled The United States *vs.* The State of Texas, in which the State of Texas appeared by her attorney general and other counsel.

10. At the October term, 1895, a decree was rendered in said cause as follows:

40 "This cause having been submitted upon the pleadings, proofs, and exhibits and the court being fully advised, it is ordered, adjudged and decreed that the territory east of the 100th meridian of longitude, west and south of the river now known as the North fork of Red river, and north of a line following westward, as prescribed by the treaty of 1819 between the United States and Spain, the course and along the south bank both of Red river and of the river now known as the Prairie Dog Town fork or South fork of Red river, until such line meets the 100th meridian of lon-

gitude,—which territory is sometimes called Greer county,—constitutes no part of the territory properly included within or rightfully belonging to Texas at the time of the admission of that State into the Union, and is not within the limits, nor under the jurisdiction of that State, but is subject to the exclusive jurisdiction of the United States of America. Each party will pay its own costs."

After this decree was rendered, the State of Texas exercised no further control or jurisdiction of said territory, and the same was afterwards organized into Greer county, Oklahoma Territory, and as a part of said Territory. The territory described in said decree is the same as was embraced in Greer county, Texas, as created and organized as aforesaid.

The recitals in the report of said cause of United States *vs.* Texas, as reported in the 162 volume of the United States Supreme Court Reports and the printed record in said cause, may be used as full evidence of the facts therein stated, as to the institution of the suit, the appearance and pleadings of the parties and the decree of the court, without the necessity of producing certified copies thereof from the records of said court.

In addition to the foregoing the trial judge made a finding of fact to the effect that the patents referred to for the four leagues of land purport on their faces to have been issued by virtue of an act of the legislature of the State of Texas, approved April 7, 1883. (Chapter 55 Gen. Laws 1883.)

41 *Opinion.*

In addition to the usual averments in trespass to try title, the State averred in its petition that the defendant claimed title to the land by virtue of the patents issued by the governor of Texas July 18, 1887, to Greer county, Texas, comprising the same territory as is embraced in the defendant Greer County, Oklahoma Territory; that the patents were issued without legal authority, and prayed that the same be cancelled and held for naught. The Supreme Court of the United States in the case referred to in the agreed statement, decided that the territory embraced in what was originally considered and treated by the legislature and other officers of Texas as a part of the State, was in fact within the Territory of Oklahoma, and was no part of the State of Texas. This being true, if it be conceded that the patents issued by the governor of Texas vested title in a *de facto* county, and that the defendant in this case (Greer County, a political division of Oklahoma Territory) has succeeded to the legal title granted by the patents, still, as the lands referred to were granted for public school purposes, and were held in trust by Greer county for such purposes, and as Greer county will not and cannot use them for such purposes within the limits of Texas, we are of the opinion that the State was entitled to have the patents cancelled, and recover the land. This case is distinguishable from Cameron's Executors *vs.* State, 68 S. W., 508. The land involved in that case had been

sold by Greer county; and, as between the State and the vendees of the county, it was held by the Supreme Court that the patents vested title in Greer county, and that Greer county had the power to convey the land to the purchasers. But the court did not hold that if the land in that case had not been sold by the county, and it had become impossible for the county to execute the trust, the State could not recover the trust fund.

We find no error in the record, and the judgment is affirmed.

Affirmed.

W. M. KEY,
Associate Justice.

Filed 1–14–03.

42 (Endorsed): No. 2901. Greer County, plaintiff in error *vs.* The State of Texas, defendant in error. Error from Travis county. Opinion. Affirmed. Key, associate justice. Filed in court of civil appeals, third supreme judicial district, Austin, Texas, Jan. 14, 1903. R. H. Connerly, clerk.

Judgment of Court of Civil Appeals.

Rendered January 14, 1903.

GREER COUNTY *vs.* STATE OF TEXAS. } No. 2901.

Error from district court of Travis county.

Opinion by Associate Justice Key.

This cause came on to be heard on the transcript of the record, and, the same being inspected, because it is the opinion of the court that there was no error in the judgment: It is therefore considered, adjudged and ordered that the judgment of the court below be in all things affirmed; that the plaintiff in error, Greer County, of the Territory of Oklahoma, principal, and its sureties, H. N. Atkinson, Geo. Clark and D. C. Bolinger, pay all costs in this behalf expended, and this decision be certified below for observance.

Motion for Rehearing in Court of Civil Appeals.

Filed January 29th, 1903.

In the Court of Civil Appeals, Third Supreme Judicial District, at Austin.

GREER COUNTY, Plaintiff in Error,
vs.
STATE OF TEXAS, Defendant in Error. } No. 2901.

43 Now in the above entitled and numbered cause comes plaintiff in error and moves the court to set aside the judgment heretofore rendered in this cause and grant it a rehearing for the following reasons, to-wit:

1st. The court erred in holding by its judgment that the title to this property never vested in Greer county, when at the time the patent to the land in controversy was issued, Greer county was a *de facto* part of the State of Texas and was so considered by the people of Texas, and the framers of its constitution and when the State of Texas, by its constitution and laws, had absolutely vested the title to these lands in said Greer county, Texas.

2nd. The court erred in its judgment in awarding the lands in controversy to the State of Texas as against Greer county, for the reason that the undisputed evidence showed that the State of Texas, through its officers, at the time said lands were granted to Greer county, was fully aware that a controversy existed between the United States and State of Texas, as to the ownership of Greer county and with full knowledge of said controversy, said patents were issued to said Greer county, Texas; and said State under the law was not and is not authorized to recover lands granted under those circumstances.

3rd. The court erred in affirming the judgment of the district court of Travis county, for the reason that the judgment of said district court and of this court was a violative of the Constitution of the United States of America in this: that the same impairs the obligation of the contracts as evidenced by the patents issued in this cause.

Said judgments are further in violation of the Constitution of the United States in this: that their effect is to take the property of said Greer county for public use without making compensation therefor.

4th. Said court further erred in awarding said lands to plaintiff because under the law the effect of the judgment of the Supreme Court of the United States was the same as though Greer county, Texas, had been ceded to the United States, and the effect of such
44 cession would not be to deprive said Greer county of its property, which it heretofore legally acquired.

Wherefore, plaintiff in error prays that it be granted a rehearing and that said judgment of the district court be here reversed and rendered for plaintiff in error.

CLARK & BOLINGER,
H. N. ATKINSON,
Att'ys for Pl'ff in Error.

(Endorsed:) With app. No. 3692. No. 2901. No. 1550. Greer County, pl'ff in error *vs.* The State of Texas, def't in error. Motion for rehearing. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas. Jan. 29, 1903. R. H. Connerly, clerk. Filed in supreme court Mar. 9, 1903, F. T. Connerly, clerk.

Order of Court of Civil Appeals Submitting Motion for Rehearing.

Made February 4th, 1903.

Motion 1550. No. 2901. Greer County *vs.* State of Texas. Error from Travis county. Motion for a rehearing. Submitted.

Order of Court of Civil Appeals Overruling Motion for Rehearing.

Made February 18th, 1903.

Motion 1550. No. 2901. Greer County *vs.* State of Texas. Error from Travis county; Motion for a rehearing. The motion is overruled.

45 *Application for Writ of Error.*

In Supreme Court of the State of Texas.

Filed March 7th, 1903.

In the Court of Civil Appeals, Third Supreme Judicial District.

GREER COUNTY, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error. } No. 1550.

Error from the district court of Travis county, Texas.

To the honorable supreme court of the State of Texas:

Your petitioner, Greer County, a municipal corporation, and subdivision of the Territory of Oklahoma, and formerly an organized

county and municipal sub-division of the State of Texas, comes and appeals to this court for a writ of error, and showeth as follows:

I.

That heretofore, towit, on the — day of ——, 1900, The State of Texas instituted a suit in Cochran county, Texas, as plaintiff, against Greer County and certain other defendants, as defendants, praying for cancellation of certain patents issued by the State of Texas to Greer county on July 18, 1887, which lands are described in detail in plaintiff's second amended original petition, filed in the district court of Travis county, after change of venue, by agreement from the county of original jurisdiction to that county. There was a severance as to some of the defendants, who were the heirs of Wm. Cameron, deceased, and their rights and interests have been
46 already disposed of by this court. That part of the cause affecting plaintiff in error, and involving seven thousand, two hundred and thirty six acres of land, was tried in the district court of Travis county, on the 29th of April, 1901, and resulted in a judgment in favor of the State cancelling said patents. (R. p. 27-29.)

Appeal was prosecuted to the court of civil appeals, third supreme judicial district, and on the — day of ——, said judgment was affirmed by said court of civil appeals, and within the time limited by law, plaintiff in error filed its motion for rehearing on towit, January 29th, 1903, and on towit, the 18th day of February, 1903, said motion for rehearing was overruled. The cause involves the title to over 7000 acres of land, situated in Cochran and Hockley counties, State of Texas, and plaintiff in error now prosecutes error to this court, and prays for a writ of error upon the grounds set up in its motion for rehearing, as follows:

First Assignment of Error.

"The court of civil appeals erred in holding by its judgment that the title to this property never vested in Greer county, when at the time the patent to the land was issued Greer county was *de facto* a part of the State of Texas, and was so considered by the people of Texas, and the framers of its constitution, and when the State of Texas, by its constitution and laws had absolutely vested the title of these lands in said Greer county."

Proposition.

At the time of the grant evidenced by the patents in this case by the State of Texas to Greer county, said county was a municipal sub-division of the State of Texas, and even if not *de jure*, such county was certainly *de facto* a part of the State of Texas, and said

State of Texas had, for many years, claimed and exercised dominion and jurisdiction over the same; and the grant by the State of Texas of the land to said county, under the laws of the State of Texas, vested complete title in Greer county, which title,
47 so vested, was beyond the reach and recall of the State of Texas through any department of its government, executive, legislative or judicial.

Statement.

The various laws under which Texas asserted and exercised jurisdiction and dominion over Greer county, as a sub-division of the State, are set forth in brief of plaintiff in error in the court of civil appeals, (p. 6–8) and many other laws could be cited running from 1836.

The agreed statement of facts sets forth that these four leagues of land were granted to Greer county, as an organized county of the State of Texas. (R. p. 21) Patents were issued to Greer county on July 18th, 1897. (R. p. 22)

The territory organized as Greer county, Oklahoma, was, up to October, 1895, claimed by the State of Texas to be a part of her territory, and up to said date the said State exercised jurisdiction and control over Greer county. (R. p. 23, 25.)

Authorities.

Heirs of Wm. Cameron *vs.* The State, 63 S. W., 508.
Day Co. *vs.* State, 68 Tex., 539.
Phillips *vs.* Payne, 92 U. S., 130.
Texas *vs.* White, 7 Wallace, 700,

and other authorities cited on p. 4 of brief of plaintiff in error in the court of civil appeals.

As to change of government, see:
U. S. *vs.* Roselins, 15 How. 36.
Dent *vs.* Emmeger, 14 Wall. 308.

"Perfect titles before cession continue so afterwards, even though the treaty should not so provide, and this rule applies to municipal corporations as to individuals."
Townsend *vs.* Greely, 5 Wall. 326.

As to patents vesting full title in Greer county,
Constitution of Texas, art. VII. sec. 6.

48 *Remarks.*

The title having vested in Greer county, the question naturally arises, Has the grantor the right, even by judicial action, to revoke

it? The case is similar to cession or conquest of the country, and is settled by many Texas authorities that this does not affectthe rights of property in any land.

Hardy *vs.* De Leon, 5 Tex., 234,
Musquis *vs.* Blake, 24 Tex., 466,
Kirkpatrick *vs.* Sisneros, 23 Tex., 124,
Maxey *vs.* O'Conner, 23 Tex., 242.

Patents to Greer county were issued in pursuance of law, and were therefore valid at the time of their issuance. The constitution provided in 1876, at the time of its adoption, and now provides that all lands thereafter granted to the several counties of the State for educational purposes, right of property and the title thereto was vested in said counties; and full discretion was given to the commissioners' court of each county to administer those lands as they saw proper, without consulting the State, in any of its departments, with reference thereto; in other words, complete ownership was vested in the counties. These lands became the private property of Greer county, by the terms of the grant, and the State constitution and it is elementary that the rights of private property are neither affected either by cession or by conquest, or otherwise.

U. S. *vs.* Percheman, 7 Pet. 51.
Stracher *vs.* Lucas, 12 Pet. 410.
Airhart *vs.* Massieu, 98 U. S., 491.

This latter authority holds that the division of a country does not divest rights that either may have to property situated in the other. As far as the ownership of these lands *are* concerned, Greer county must be treated as an individual in every sense of the word. The title was in Greer county by act of the State of Texas. The property, by virtue of the grant, became private property of Greer county
49 and no subsequent occurrence, whereby jurisdiction of the State was lost over Greer county, can authorize or justify the State in its attempt to retract this grant which had become executed by the State's own act, and under the State's own laws.

Second Assignment of Error.

The court of civil appeals erred in its judgment in affirming the judgment of the district court, and in awarding the land in controversy to the State of Texas, and cancelling the patents, for the reason that the undisputed evidence showed that the State of Texas, through its officers, at the time said lands were granted to Greer county, was fully aware of the controversy then existing between the United States of America and the State of Texas as to ownership of Greer county, and with full knowledge of said controversy said patents were issued to said Greer county, and the State, under the rules of law and equity, was not authorized to recover back land granted under such circumstances.

Proposition.

Where the means of inquiry or knowledge are equally open to both parties, if a mistake occurs without fraud or falsehood, neither party is entitled to relief.

Statement.

The contest as to the ownership of Greer county was known to the legislative and executive departments of the State government certainly for the year 1860 up to the date of the grant of the patents in 1887. (R. p. 17)

Authorities.

Railway Co. *vs.* Van Alstyne, 56 Tex., 448–9,
Galveston county *vs.* Gorham, 49 Tex., 303,
Gilliam *vs.* Alford, 69 Tex., 271.

Indeed, the proposition may be stated more strongly thus:
Where the facts are equally unknown to both parties, or when they have equal information or means of knowledge, or where the facts are doubtful from its own nature, if the parties act in good faith, a court of equity will not interfere.

Adams. Eq. (7 ed.) 166 *et seq.* and notes
50 For b. Eq. (116) and notes
Farnsworth *vs.* Duffner, 142 U. S. 43,
Baltzer *vs.* Rwy. Co. 115 U. S., 634,
May *vs.* Le Claire, 11 Wall. 217,
Juzan *vs.* Toulmin, 9 Ala., 662.
Wilson *vs.* Western Rwy. 77 N. C., 445.
Dambman *vs.* Schiestery, 75 N. Y., 55.
Webster *vs.* Stark, 10 Lea (Tenn.) 406,
Hill *vs.* Bush, 17 Ark., 522,
McCobb *vs.* Richardson, 24 Me., 82.
Belt *vs.* Wehan, 2 Cal., 150.
Pomeroy Eq., sec. 843.

Remarks.

This court has held that when the State enters her courts as a suitor, the same law applies to it as to a citizen.
92 Tex., 80.

This being the case, the same principles which would conclude a private litigant, must conclude the State; and there being no charge of fraud or dishonesty, either on the part of Greer county, which as a municipal corporation has stood helpless between the contending

sovereignties, and the State having acted with full knowledge of the facts, as well stated by the authority last quoted (Pomeroy), equity will not grant relief at suit of either party, and the State cannot obtain relief, merely because all her departments of government have erred in their judgment.

The other authorities cited are equally as strong, or perhaps, stronger, and these authorities are established as the law of this court by the cases cited. This being the case, the State cannot go into her own courts and arbitrarily revoke a grant which she made with her eyes open, and when the other party has been, in no manner, at fault.

III.

The third assignment of error is as follows:

"The court of civil appeals erred in affirming the judg-
51 ment of the district court for the reason that said judgment constituted an act on the part of the State of Texas violative of the Constitution of the United States in this, that said judgment and said action on the part of the State impaired the obligation of the contract between the State of Texas and Greer county, both parties being able and willing to contract, and having contracted. And said judgments of the district court and the court of civil appeals constitute in fact a further violation of the Constitution of the United States, the taking of the property of Greer county for public use without just compensation therefor."

The above assignment is submitted as a proposition.

Authorities.

Fletcher *vs.* Peck, 6 Cranch *pp.* 87.
Durst *vs.* Daughtry, 81 Tex., 650.

The authorities could be multiplied *ad infinitum*, but the principle is so established that it is not necessary in this court. The inhibition extends to all departments of the State government, executive, legislative and judicial; and wherever the State attempts to act through either of these departments, and by said act impinges upon the constitutional inhibition, its act is null.

In the case at bar here is an executed grant, which all authorities hold is a contract. The State of Texas had legal capacity to make the grant; the county of Greer had legal capacity to take the grant; the grant was made by the State and accepted by Greer county, and thereby became fully and finally executed. Being a contract between the State and Greer county, and the obligation assumed by the State in this transaction being that the State contracted and agreed to finally part with its title to the lands granted, and Greer county having accepted the grant and assumed full ownership of the lands, when it was thoroughly *sui juris*, this

proceeding on the part of the State, through her own courts, cannot be construed otherwise, not only an impairment but as a positive annullment, and a disregard of the obligation of its contract.

52 Suppose the State had made a grant to an individual, a citizen of Texas, and the individual is subsequently removed from the State, or has been banished from the State, could the State in that event, cancel its grant because of a mistake? Here Greer county has not forfeited any right by any act on her part. After the consummation and execution of the grant, and at all other times, Greer county, as a municipal subdivision, has perforce remained quite powerless to say or do any word or act which could influence the final result. Then her extinguishment by the decree of the Supreme Court of the United States as a constituent part of Texas, destroys her rights of property honorably acquired by the bounty of the State through her constitution previous to such extinguishment. That is the question in the case. She has died, as it were, and ceased to be a municipal sub-division of the State of Texas, but has been resurrected as a municipal sub-division of the Territory of Oklahoma, was recognized in this suit with the same boundaries, same inhabitants, and with the same rights of property. This being the case, the judgment of the court of civil appeals, as well as the district court, are manifestly violative of the constitution of the United States, in that it is a palpable attempt on the part of the State to violate its own contract.

IV.

The fourth assignment of error is as follows:—

"The court of civil appeals further erred in cancelling the patents to said land, and awarding said land to the State because under the law, the effect of the judgment of the Supreme Court of the United States was the same as though Greer county, Texas, had been ceded to the United States, and the fact of such cession could not, in law, deprive Greer county of its property, which before that it had legaliy acquired."

This assignment of error has been treated in the proposition under the first assignment of error, and need not be repeated, but he same is insisted upon.

53 ## V.

Applicant therefore comes and prays the court for a writ of error in terms of law, directed to the court of civil appeals, third supreme judicial district, requiring said court to transmit to this court the record, and all other papers prescribed by law, and by the rules to this court; and that upon hearing of said writ of error it may please this court to vacate and set aside the judgment of said court of civil appeals, as well as the judgment of the district court of Travis

county, and here render judgment in favor of plaintiff in error, and that The State of Texas, defendant in error, take nothing by its suit.

H. N. ATKINSON,
CLARK & BOLINGER,
Counsel for Plaintiff in Error.

(Endorsed:) App. No. 3692. Greer County *vs.* The State of Texas. Application for writ of error. Filed in court of civil appeals, third supreme judicial district, Austin, Texas, Mar. 7, 1903. R. H. Connerly, clerk. Filed in supreme court Mar. 9, 1903. F. T. Connerly, clerk. Refused.

Clerk's Office, Supreme Court.

I, F. T. Connerly, clerk of the supreme court of Texas, hereby certify that the above and foregoing eight pages contain a true and correct copy of the original petition for writ of error in application No. 3692, Greer County, applicant, *vs.* The State of Texas, which said application for writ of error was refused by the supreme court of Texas on the 12th day of March, A. D. 1903.

Witness my hand and the seal of said court at the city of Austin, this the 4th day of December, A. D. 1903.

[SEAL.] F. T. CONNERLY, *Clerk.*

(Endorsed:) Appl. No. 3692. Greer County *vs.* State of Texas. Certified copy of petition for writ of error. Fee $4.80. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, Dec. 4, 1903. R. H. Connerly, clerk.

54 *Judgment of the Supreme Court of Texas.*

Rendered March 12th, 1903.

In Supreme Court of Texas, Third District.

GREER COUNTY
vs.
THE STATE OF TEXAS.

MARCH 12TH, 1903.

This day came on to be heard the application of Greer County for a writ of error to the court of civil appeals for the third district, and the same having been duly considered, it is ordered that said application be refused; that the applicant, Greer County and its sureties, H. N. Atkinson, Geo. Clark and D. C. Bolinger pay all costs incurred on this application.

I, F. T. Connerly, clerk of the supreme court of Texas, hereby certify that the above is a true and correct copy of the judgment rendered by said court on said application for a writ of error.

Witness my hand and the seal of said court, this the 28th day of March, A. D. 1903.

[SEAL.]

F. T. CONNERLY, *Clerk*,
By J. S. MYRICK, *Deputy*.

(Endorsed:) Application No. 3692. Greer County *vs.* The State of Texas. Copy of judgment in supreme court. Application for writ of error refused. Filed in court of civil appeals, third district, Austin, Texas, March 28th, 1903, R. H. Connerly, clerk.

55 *Bill of Costs, Supreme Court of Texas.*

Filed March 28th, 1903.

Clerk's Office, Supreme Court.

GREER COUNTY *vs.* THE STATE OF TEXAS. } No. 3692. Certified Copy Bill of Costs, Supreme Court.

Filing application	.50
Docketing petition	.50
Entering appearance of counsel	.50
Filing two briefs	.60
Filing three papers	.90
Entering orders	.50
Entering judgment on application	1.00
Certified copy of judgment	1.00
Taxing costs of application	.50
Certified copy bill of costs	1.00
Total	$7.00

I, F. T. Connerly, clerk of the supreme court of Texas, hereby certify that the above copy of the original bill of costs is true and correct.

Witness my hand and seal of said court at Austin, this the 28th day of March, 1903.

[SEAL.]

F. T. CONNERLY, *Clerk*.

(Endorsed:) Application No. 3692. Certified copy bill of costs in supreme court, Austin. Greer County *vs.* The State of Texas. $7.00. Filed in court of civil appeals, third supreme judicial district, Austin, Texas. Mar. 28, 1903. R. H. Connerly, clerk.

56 *Petition for Writ of Error to the Supreme Court of the United States.*

Filed December 4th, 1903.

In the Court of Civil Appeals, Third Supreme Judicial District of Texas.

GREER COUNTY, Plaintiff in Error,
vs.
STATE OF TEXAS, Defendant in Error.

To the honorable the Supreme Court of the United States:

Your petitioner in error, Greer County, a part of the Territory of Oklahoma, comes and shows to the court that on towit: the — day of January, A. D. 1903, a judgment was rendered in the above entitled cause in favor of the State of Texas, and against your petitioner in error, whereby a judgment of the trial court in said cause was affirmed, which latter judgment in effect canceled certain patents long before issued by the State of Texas to plaintiff in error, for lands for school purposes.

Plaintiff in error would further show that after the affirmance of said judgment by said court of civil appeals, plaintiff in error, in accordance with the law and rules of practice which obtain in the State of Texas, did file its application to the supreme court of said State, for a writ of error to revise said judgment of the court of civil appeals, and that on towit: the 12th day of March, 1903, said application for a writ of error was refused by said supreme court of Texas, leaving the judgment of said court of civil appeals to
57 stand as the final judgment in said cause, and from which no further appeal could be prosecuted.

Your petitioner avers that in the record and proceedings, as also in the rendition of the judgment aforesaid by the highest court of said State of Texas, in which a decision could be had in the said suit, there was drawn in question the validity of an authority exercised under said State, on the ground of its being repugnant to the Constitution and laws of the United States, and the decision was in favor of the validity of such authority. Plaintiff in error believes that thereby a manifest error hath happened, to the great damage of said Greer County, and it prays the court for a writ of error, directed to said court of civil appeals of the third supreme judical district of the State of Texas, in terms of law, in order that said error, if any, may be corrected, and what of right and according to the laws and customs of the United States should be done.

GEORGE CLARK,
D. C. BOLINGER,
H. N. ATKINSON,
Attorneys for Plaintiff in Error.

(Endorsed:) Filed in court of civil appeals, third supreme judicial district, Austin, Texas, Dec. 4, 1903. R. H. Connerly, clerk.

58 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of civil appeal of the third supreme judicial district of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court of civil appeals of the third supreme judicial district of Texas, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Greer County, Oklahoma Territory, and the State of Texas, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission; a manifest error hath happened to the great damage of the said Greer County, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within thirty days from the filing of this writ, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice
59 of the said Supreme Court, the 4th day of December, in the year of our Lord one thousand nine hundred and three.

[The Seal of the U. S. District Court, Western Dist. Texas, Austin.]

D. H. HART,
Clerk U. S. Circuit Court, Western District Texas,
By J. W. HANCOCK, *Deputy.*

Allowed by
H. C. FISHER,
Chief Justice Court Civil Appeals,
3d Supreme Judicial District, State of Texas.

Filed in court of civil appeals, 3rd supreme judicial district o Texas, this the 4th day of December, A. D. 1903.

R. H. CONNERLY, *Clerk.*

60 *Supersedeas Bond.*

Filed December 4, 1903.

In the Court of Civil Appeals, Third Supreme Judicial District o Texas.

GREER COUNTY, Plaintiff in Error,
vs.
STATE OF TEXAS, Defendant in Error.

Know all men by these presents: that we, Greer County, Okla homa Territory, as principals, and Geo. Clark and H. N. Atkinso and D. C. Bolinger, as sureties, are held and firmly bound under th State of Texas in the sum of two hundred and fifty dollars to be pai to the said State of Texas, and for the payment of which well an truly to be made, we bind ourselves and each of us, our heirs, exec utors, and administrators, jointly and severally and firmly by thes presents.

Signed, seal- and dated, this the 3rd day of Dec. in the year of ou Lord one thousand nine hundred and three.

The condition of the above obligation is such that whereas th above named Greer County has obtained a writ of error to the Su preme Court of the United States to reverse the judgment rendere in the above entitled cause by the said court of civil appeals of th third supreme judicial district of Texas.

Now if the above named Greer County shall prosecute said writ o error to effect and answer all damages and costs if it fails to mak said writ of error good, then this obligation should be void, other wise to remain in full force and effect.

Approved as a supersedeas bond, this the 4th day of Dec. 1903.

GREER COUNTY,
By its attorneys, CLARK & BOLINGER. [L. S.]
GEO. CLARK. [L. S.]
H. N. ATKINSON. [L. S.]
D. C. BOLINGER. [L. S.]

Approved as a supersedeas bond, this the 4th day of Dec. 1903.

H. C. FISHER,
Chief Justice Court Civil Appeals,
Third Supreme Judicial District of Texas.

(Endorsed :) Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, Dec. 4, 1903. R. H. Connerly, clerk.

61 In the Court of Civil Appeals, Third Supreme Judicial District of Texas.

GREER COUNTY, Plaintiff in Error,
vs.
STATE OF TEXAS, Defendant in Error.

In the above entitled cause The State of Texas, defendant in error hereby accepts service of citation and waives the issuance and service thereof and consents to enter its appearance in the Supreme Court of the United States as if duly served with process.

This the 4th day of Dec., 1903.

C. K. BELL,
General Attorney of Texas.

Filed in court of civil appeals, 3rd supreme judicial district of Texas this the 4th day of December A. D. 1903.

R. H. CONNERLY, *Clerk.*

62 *Assignments of Error.*

Filed December 4th, 1903.

In the Supreme Court of the United States.

GREER COUNTY, Plaintiff in Error,
vs.
STATE OF TEXAS, Defendant in Error.

In error to the court of civil appeals of the third supreme judicial district of the State of Texas.

In the above numbered and entitled cause comes Greer County, plaintiff in error, and here now complaining of the action and judgment of the court of civil appeals, aforesaid, assigns the following errors:

I.

The court of civil appeals erred in holding by its judgment that the title to the property in issue never vested in Greer county, because at the time the patent to the land in controversy was issued by the express direction and authority of the political departments of the State of Texas, Greer county was *de facto* a part of the State of Texas, and was so considered by the State of Texas, and the framers of its constitution, and the State of Texas, under its constitution and laws, had vested title absolute to said land in said Greer county.

II.

The court of civil appeals of Texas further erred in its judgment in awarding the lands in controversy to the State of Texas, and in canceling the patents to Greer county, for the reason that the undisputed evidence demonstrated that the State of Texas, at the time said lands were granted to Greer county was fully aware
63 that a controversy existed between the United States and the State of Texas, as to the ownership of Greer county, and with full knowledge of said controversy, said patents were issued to said Greer county, and the title to said lands thereby vested in Greer county; and the State of Texas, under the law and rules of equity, was not authorized to recover the lands so granted, and cancel the titles thereto, under the excuse and pretext that a mistake was made by said State, as to the ownership of Greer county.

III.

The court of civil appeals of Texas further erred in affirming the judgment of the district court of Travis county, and canceling the patents to said lands, because such action was a violation by the State of the Constitution of the United States of America, in that it impaired the obligation of the contracts evidenced by said patents, and consummated between the State of Texas and Greer county, by the issuance by the State and acceptance by the county of said patents and the grants of lands conveyed thereby.

IV.

The judgments of the district court of Travis county and of the court of civil appeals, aforesaid, are further violative of the Constitution of the United States, in that the effect of said judgments was and is to take the property of Greer county for public use, without making just compensation therefor.

V.

The court of civil appeals of Texas further erred in affirming the judgment of the district court of Travis county canceling the patents to Greer county, and awarding said lands to the State of Texas, because the effect of the judgment of the Supreme Court of the United States in deciding that Greer county was not a part of Texas, was, in effect, the same as though said county had been ceeded by treaty to the United States; and the effect of such
64 cession or of such decision, could not deprive Greer county of its property theretofore legally acquired.

GEORGE CLARK,
D. C. BOLINGER,
H. N. ATKINSON,
Attorneys for Plaintiff in Error.

(Endorsed:) Filed in court of civil appeals, third supreme judicial district, Austin, Texas, Dec. 4, 1903. R. H. Connerly, clerk.

Bill of Costs.

Court of Civil Appeals, 3rd District.

Filing record		$ .50
Docketing cause		.50
Appearances		1.00
Filing briefs		1.00
Filing and entering motion		.35
Orders		2.00
Filing 18 extra papers		1.80
Judgment		1.00
Taxing costs and copy		.50
Mandate		1.50
Recording opinion		3.00
Certified copy bill of costs		.75
Clerk's costs, sup. ct		7.00
Certified copy orders to sup. ct		2.00
Notices		6.00
	Copy of motion	2.00
65	Issuing 1 precept	1.00
	Sheriff's fees	2.00
Copy of petition for writ of error		4.80
Costs of U. S. circuit court		2.00
Transcript fee, court of civil appeals		33.50
Total		$74.20

THE STATE OF TEXAS:

I, R. H. Connerly, clerk of the court of civil appeals in and for the third supreme judicial district of Texas, hereby certify that the foregoing pages, numbered from 1 to 65, both inclusive, contain a true and correct copy of the original transcript of the record from the district court of Travis county, Texas; all orders, judgment and opinion of said court of civil appeals; copy of plaintiff in error's motion for rehearing; and copy of certified copies of orders and bill of costs of the supreme court of Texas; copy of bond and assignment of errors to the Supreme Court of the United States; original writ of error and acceptance of service and certified copy of application for writ of error to the supreme court of Texas, and of petition for writ of error to the Supreme Court of the United States in the case of Greer County, plaintiff in error *vs.* The State of Texas, defendant in error, as the same now appear on file and of record in the office of the said

clerk of the court of the civil appeals for the third supreme judicial district of Texas.

In testimony whereof, I have hereunto set my hand and annexed the seal of said court of civil appeals, 3rd district, at Austin, Texas, this the 15th day of December, 1903.

[Seal Court of Civil Appeals of the State of Texas.]

R. H. CONNERLY,
Clerk Court of Civil Appeals,
3rd Supreme Judicial District of Texas.

Endorsed on cover: File No. 19,171. Texas court of civil appeals, 3rd supreme judicial district. Term No. 160. Greer County, Oklahoma Territory, plaintiff in error, *vs.* The State of Texas. Filed December 21st, 1903. File No. 19,171.

Office Supreme Court U. S.
FILED
NOV 21 1904
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 160.

GREER COUNTY, OKLAHOMA TERRITORY,

PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS, DEFENDANT IN ERROR.

Error to the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

BRIEF OF PLAINTIFF IN ERROR.

H. N. ATKINSON,
GEO. CLARK,
D. C. BOLINGER,
Counsel for Plaintiff in Error.

DAVIS & FORD, PRINTERS, WACO.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 160.

GREER COUNTY, OKLAHOMA TERRITORY,

PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS, DEFENDANT IN ERROR.

Error to the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This is a suit of trespass to try title by the State of Texas against Greer County, Oklahoma Territory, and the executors, heirs and devisees of William Cameron, deceased, to recover the title and possession of four leagues of land lying in Hockley and Cochran Counties, in the State of Texas, being the four leagues of school land for which patents had issued, under the provisions of the constitution and laws of the State of Texas to Greer County, during the time that the territory now embraced in Greer County, Oklahoma Territory was claimed by the State of Texas as a part of her territory.

It is alleged in the petition that the defendants claimed title to said lands under said patents, but that the patents were issued without authority of law and are void, and there was a prayer for cancellation.

The defendants answered, the Camerons setting up title under conveyances from Greer County, Texas, to 10,476 acres of land, and Greer County, Oklahoma Territory, set-

ting up title to 7,236 acres, being the balance of said four leagues unsold by Greer County, Texas.

Upon the trial there was a severance and separate judgment was rendered against Greer County, Oklahoma Territory, for that part of the land claimed by it, from which judgment said defendant sued out writ of error.

The cause was tried by the Court without a jury, upon an agreed statement of facts, which is embodied in a finding of facts by the Court. (R. p. 14).

The trial Court found as a conclusion of law that: by the decision of this Court in the case of United States vs. Texas (162 U. S., 1) that the territory over which the State of Texas claimed jurisdiction, and which the State had attempted to organize as a County of the State under the name of Greer County, was not, and had never been, a part of the territory of the State; and that the act creating said territory into a County of Texas was without authority and void, and the issuance of the patents for the four leagues of school lands to said County under the provisions of the general law authorizing the Commissioner of the General Land Office to issue such patents to each organized County of this State was without legal authority and the patents were void.

Upon the same conclusions of fact and law judgment was rendered in favor of the State against the heirs and executors of William Cameron, deceased, for that portion of the land claimed by them which was affirmed by the Court of Civil Appeals for the Third Supreme Judicial District of Texas (67 S. W. Rep., 348); but upon writ of error to the Supreme Court of Texas, the judgments of the District Court and the Court of Civil Appeals were reversed and judgment rendered for the heirs of Cameron. (95 Tex., 545).

The Supreme Court of Texas in that opinion held that the patents conveyed good title at the time of their issuance to Greer County, Texas.

Upon error in this particular branch of the case the Court of Civil Appeals for the Third Supreme Judicial District of Texas, held that the judgment of the trial Court was without error and the same was affirmed. (R. pp. 27-31). After filing a motion for re-hearing in that Court, (R. p. 32)

which was denied, application was made by Greer County, plaintiff in error, for writ of error from the Supreme Court of Texas to said Court of Civil Appeals (R. pp. 33-40), which application for writ of error was on to-wit: March 12, 1903, refused by the Supreme Court of Texas (R. p. 40); afterwards Greer County perfected its writ of error from this Court to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, assigning the following errors, to-wit:

I.

The Court of Civil Appeals erred in holding by its judgment that the title to the property in issue never vested in Greer County, because at the time the patents to the land in controversy were issued by the express direction and authority of the political departments of the State of Texas, Greer County was de facto, a part of the State of Texas, and was so considered by the State of Texas, and the framers of its constitution; and the State of Texas, under its constitution and laws, had vested title absolute to said land in said Greer County.

II.

The Court of Civil Appeals of Texas further erred in its judgment in awarding the lands in controversy to the State of Texas, and in cancelling the patents to Greer County, for the reason that the undisputed evidence demonstrated that the State of Texas at the time said lands were granted to Greer County was fully aware that a controversy existed between the United States and the State of Texas, as to the ownership of Greer County, and with full knowledge of said controversy, said patents were issued to said Greer County, and the title to said lands thereby vested in Greer County; and the State of Texas, under the law and rules of equity was not authorized to recover the lands so granted, and cancel the titles thereto, under the excuse and pretext that a mistake was made by said State as to the ownership of Greer County.

III.

The Court of Civil Appeals of Texas further erred in affirming the judgment of the District Court of Travis County, and cancelling the patents to said lands because such action was a violation by the State of the Constitution of the

United States of America, in that it impaired the obligation of the contracts evidenced by said patents, and consummated between the State of Texas and Greer County, by the issuance by the State and acceptance by the County of said patents and the grants of lands conveyed thereby.

IV.

The judgments of the District Court of Travis County and of the Court of Civil Appeals aforesaid, are further violative of the Constitution of the United States, in that the effect of said judgments was and is to take the property of Greer County for public use, without making just compensation therefor.

V.

The Court of Civil Appeals of Texas further erred in affirming the judgment of the District Court of Travis County cancelling the patents to Greer County, and awarding said lands to the State of Texas, because the effect of the judgment of the Supreme Court of the United States in deciding that Greer County was not a part of Texas was, in effect, the same as though said county had been ceded by treaty to the United States; and the effect of such cession or of such decision, could not deprive Greer County of its property before that legally acquired.

I.

When a grant is made by a State to an individual or municipal corporation, and the grant is accepted, the contract is complete; and any action by the State through either its legislative, executive or judicial department, which tends to impair the obligation of said contract, is in violation of Sec. 10 of Art. 1, of the Constitution of the United States.

AUTHORITIES.

Fletcher vs. Peck, 6 Cranch, 87-148.
Trust Co. vs. Baltimore, 64 Fed. Rep., 153.
College vs. Woodward, 4 Wheat, 518.
Chicago vs. Sheldon, 9 Wall, 50.

An examination of the case of Cameron's Executors vs. The State of Texas, reported in 95th Texas, page 551, will show that when the land in controversy was patented to Greer County, as a part of Texas, said County took title to the land.

It was further held, in that case, that Cameron, not being a party to the litigation between the United States and the State of Texas, was not affected thereby. It was also held that the title in controversy in that cause, was not different from what it would have been, had Greer County been ceded to the United States, instead of being adjudged a part of its territory by this Court.

The unanswerable logic of this decision shows a valid grant from the State of Texas to Greer County, and that Greer County was not affected by the result of the litigation between the United States and the State of Texas. A grant is a contract, and any attempt by the State of Texas to revoke its grant to Greer County, is, under the agreed facts of this case, an attempt to impair the obligation of the contract evidenced by the grant.

In Fletcher vs. Peck, cited above, the obligation of a contract made by a State in granting land to an individual is fully discussed, and the conclusion is reached that any attempt by the State to avoid its obligation is forbidden by Sec. 10 of Art. 1, of the Constitution cited above.

II.

The grants evidenced by the patents issued by the State of Texas vested title in Greer County, which title so vested was beyond recall by the State through any department of its government, executive, legislative or judicial.

Constitution of Texas, Art. VII., Sec. 6.

Cameron vs. State, 95 Tex., 545.

Milam County vs. Bateman, 54 Tex., 166.

Palo Pinto County vs. Gano, 60 Tex., 251.

The Constitution of Texas (Art. VII., Sec. 6) provides as follows:

"All lands heretofore or hereafter granted to the several counties of this States for educational purposes, are of right the property of said counties respectively to which they were granted, and the title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part in manner to be provided by the Commissioners' Court of the county. * * * Said lands and the proceeds thereof when sold shall be held

by said counties alone as a trust for the benefit of public schools therein * * * " (See Revised Statutes of Texas, 1895, p. XXIX). So by this provision of the Constitution it is evident that when the State granted this four leagues of land to Greer County, the title and ownership of said lands, under the Constitution, passed fro mthe State and vested solely in Greer County. This is plainly the purport of the decision of the Supreme Court of Texas in Cameron vs. State, 95 Tex., supra. Long previous to this controversy the Supreme Court of Texas had practically settled the question the same way.

In Milam County vs. Bateman (54 Tex., 165) the Supreme Court of Texas after a review of the various features of legislation pertaining to the county school lands, used this language:

"Section 6, Article VII, Constitution 1876, declatory of the will of the people of the State in convention assembled, as to the status of the title to such property, provides that 'all lands heretofore or hereafter granted to the several counties of this State for education or schools, are of right the property of said counties respectively to which they were granted, and the title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county.'

"Taking these several provisions together as construed by the decisions of this Court, it would seem clear that it was the intention of the State to vest the right of property in the school lands in the several counties respectively.

"Counties in their relation toward the State may be viewed in a two-fold aspect: one, which pertains to their political rights and privileges; the other, to their rights of property. Over the former, the legislature as the representative of State sovereignty can exercise such power, unless restricted by the organic law. If it could not exercise such power over the delegated political rights and privileges of counties, which are subdivisions of state governmental authority, we might have a system of petty discordant governments within a government, without unity of design or action."

"Hence the political rights and privileges delegated to counties are not within the constitutional prohibitions against

retroactive laws and those which impair vested rights. Cooley's Const. Lim., 237; People vs. Morris, 13 Wend. 331."

"A different principle, however, obtains as regards the rights of counties to property which they may acquire. Such rights, as a general rule, are protected by the same constitutional guarantees which shield the property of individuals. Cooley's Const. Lim., 237, 277; Grogan vs. San Francisco, 18 Cal., 590.

Even though the State itself may have donated the property, it thereby becomes such vested right as will be protected. Wade on Retroactive Laws, 56; Grogan vs. San Francisco, 18 Cal., 590.

"If given for a specific object, the State may very properly as in the instance under consideration of our school lands granted to counties, exercise such supervision and control over the actions of the counties as to compel the proper execution of the trust, or prevent its being defeated; but it is believed that this control, unless by consent of the county, should be subject to the restriction, that the purpose for which the property was originally acquired, as far as circumstances will admit, be kept in view; and that it shall not arbitrarily be diverted, as in the case before us, to private parties and to a wholly different purpose. Cooley's Const. Lim., 238, and authorities in note 3. In relation to these school lands, the county, though agents for the State, may be compared to agencies coupled with an interest, which cannot be revoked at the pleasure of the principal."

Numerous authorities to the same effect might be multiplied, but in view of the holding of the Texas Court, it is not necessary. Clearly upon the issuance of the patents in the case at bar the full title vested in Greer County, and it is conceded by the agreed statements of facts that the boundaries of Greer County, Oklahoma Territory, are identical with the boundaries of Greer County, Texas; and there has been no change in such boundaries. The same territorial limits and the same population are there to-day practically and substantially as they existed prior to 1895. (R. p. 15).

III.

The rights of private property are never affected either

by cession, conquest, change of sovereignty or otherwise, and the change in such sovereignty never divests rights of property. The decision of this Court in 1895, that Greer County did not belong to Texas, but was a part of the domain of the United States, can therefore have no effect upon the rights of property or grants hitherto made to Greer County by the State of Texas.

United States vs. Roselius, 15 How., 36.
Townsend vs. Greely, 5 Wall., 326.
Dent vs. Emmeger, 14 Wall., 308.
Hardy vs. De Leon, 5 Tex., 234.
Musquez vs. Blake, 24 Tex., 466.
Kilpatrick vs. Sisneros, 23 Tex., 124.
Maxey vs. O'Conner, 23 Tex., 242-3.
United States vs. Percheman, 7 Pet., 51.
Strother vs. Lucas, 12 Pet., 410.
Airhart vs. Massieu, 98 U. S., 496.

In Townsend vs. Greely, supra, it is held that perfect title before cession continued so afterwards, even though the treaty had not so provided, and this rule applied to municipal corporations as to individuals. Even the Texas authorities are to the same effect and sustain the proposition. So far then as the ownership of these lands are concerned, Greer County must be treated as an individual in every sense of the word. The title was in Greer County by act of the State of Texas. The property by virtue of the grant became private property of Greer County, and no subsequent occurrence whereby jurisdiction of the State was lost over Greer County can authorize or justify the State in its attempt to retract its grant, which had been executed by the State's own act, and under the State's own laws. It is submitted, therefore, that under the laws of Texas, as well as under international laws, and the repeated decisions of this Court, the title, as vested, cannot be affected by any act or proceeding on the part of the grantor, as is attempted in this case.

IV.

When the State enters her Courts as a suitor, the same law applies to it as to citizens. The undisputed evidence demonstrates that the State of Texas, through all its departments, executive, legislative and judicial, at the time the lands were

granted to Greer County, was fully aware of the controversy then existing between the United States and the State of Texas as to the ownership of said county, and perfected said grants to Greer County with such knowledge. And where the means of inquiry or knowledge are equally open to both parties, if a mistake occurs without fraud or falsehood, neither party is entitled to relief.

Fristoe vs. Blum, 92 Tex., 80.
Ry. Co. vs. Van Alstyne, 56 Tex., 448-9.
Galveston County vs. Gorham, 49 Tex., 303.
Gilliam vs. Alford, 69 Tex., 271.
Farnsworth vs. Duffner, 142 U. S., 43.
Baltzer vs. Ry. Co., 115 U. S., 634.
May vs. LeClaire, 11 Wall., 217.
Adams Eq., (7 Ed.) 166 et seq. and notes.
Fonb. Eq., 116 and notes.

The Supreme Court of Texas in Fristoe vs. Blum, supra, held that when the State enters her Courts as a suitor, the same law applies to it as to a citizen. This being the case, the same principle which would conclude a private litigant, must conclude the State; and there being no charge of fraud or dishonesty on the part of Greer County, which as a municipal corporation has stood helpless between the contending sovereignties, and the State having acted with full knowledge of the facts, equity will not grant relief to either party. Indeed, the propositions cited may be stated most strongly to the effect, that where the facts are equally unknown to both parties, or when they have equal information, or means of knowledge, or where the facts are doubtful in their own nature, if the parties act in good faith, a Court of equity cannot interfere.

The applicability of this doctrine to the case at bar is manifest. As the record discloses in the agreed statement of facts upon which the case was tried, the State of Texas claimed and asserted ownership of the territory of Greer County since 1836. It created the county by due legislative act with its present boundaries in 1860, and subsequent thereto established its government therein, holding its Courts and establishing and maintaining public schools at the public expense,—having its representatives in its legislature; and

during its assertion of sovereignty made the grants in question, which grants were accepted by Greer County, and presumably devoted to the same purposes for which the grants were made. Greer County has not been at fault in the transaction. Neither have her people, nor her school children. She has been simply a passive spectator of the contest as to sovereignty between the National and State governments. She has been guilty of no fault or fraud. The State of Texas had been fully advised for many long years prior to the grant as to the status of Greer County, and the doubt which must necessarily have obtained as to its proper sovereignty. Having elected to treat the particular territory as her own and to deal with it as her own, in view of these facts the State of Texas is now in no condition to attempt to take advantage of her own mistake. This mistake was hers and cannot be charged to Greer County, nor to her people. Indeed, in view of the record, it might be well asserted that the mistake so made by the State of Texas is a mistake of law and no Court ever relieves a party of a mistake of law. Be it a mistake of law or a mistake of fact, the authorities cited firmly establish the proposition announced, and that the State of Texas cannot be heard to invoke any rule of law or of equity which would authorize her to take advantage of her own mistake, in view of the fact that she did it with her eyes open.

We submit, therefore, with confidence, that the State cannot be heard now to assert ownership or to ask relief upon the record as made.

V.

The grants to Greer County by the State, being in trust for public school purposes, the children of that county became the donees of the charity and their rights and interests cannot be affected by subsequent action on the part of the State as donor. The fact that Texas has lost her dominion over Greer County since the grants were made, cannot enter into the question, as the State thereby is remitted to her action in the proper tribunals, if so disposed, to prevent or correct a perversion or waste of the funds. Property given in charity is always preserved by chancery, and even in cases where the use fails because illegal, the property does not revert, but must be applied as near as practicable to the original inten-

tion.

Dartmouth College vs. Woodward, 4 Wheat, 518.
Fontaine vs. Ravenel, 17 How., 384.
Russell vs. Allen, 107 U. S., 167.
Girard vs. Philadelphia, 7 Wall., 15.
Jones vs. Haversham, 107 U. S., 189.
Mormon Church vs. U. S., 136 U. S., 51.
Croxall vs. Shererd, 5 Wall., 281.

The opinion of the Court of Civil Appeals in the case at bar holds that as the lands were granted for public school purposes and were held in trust by Greer County for such purposes, and as Greer County will not and cannot use them for such purposes within the limits of Texas, the State was entitled to have the patents cancelled and recover the land. (R. p. 30).

In this we submit that the position of that Court is not tenable. It may be assumed without controversy that counties may hold property in trust for the support of schools. (1 Beach on Trusts, Sec. 12, page 19; Parish, etc. vs. Cole, 3 Pick., 232; Perin vs. Cary, 24 How., 575). It is elementary that the disability of the trustee cannot destroy the trust; and the fact that Greer County will not and cannot use the charity for its legitimate purposes within the limits of Texas, cannot affect the question and becomes, we submit, immaterial. The elements of charity all concur in the record here, following the rule laid down by this Court, that the charity must be for the benefit of an indefinite number of persons. (Russell vs. Allen, 107 U. S., 167). This Court is also on record contrary to the position taken by the Court of Civil Appeals of Texas.

In Girard vs. Philadelphia 7 Wall, 15) this Court held that where there was a valid grant to the corporation in trust for charitable purposes, the sovereignty may enforce without perverting the trust; and where the trustee is a corporation no modification of its franchise, its identity remaining, affects its right to hold in trust; nor can a valid vested estate in trust lapse or be forfeited for inability in the corporation to execute the trust. It has also been held in Jones vs. Haversham, 107 U. S., 189, that if the trustee corporation is incapable of executing the trust a Court may appoint a new

trustee; and in Mormon Church vs. U. S., (136 U. S., 51), it has also held that where positive law makes no provision for disposition of the property dedicated to public charitable use, reason and public policy govern. And even in cases where property dedicated to public or charitable uses fails because illegal, the property does not revert, but must be applied as near as practicable to the original intention; and that property given to charity becomes part of the public resources for promoting public welfare, and is preserved by chancery.

It occurs to us, and we submit the proposition with deference, that in so far as this property is concerned, the facts set up by the State and sustained by the Texas Courts are wholly immaterial as affects a proper decision of the question. Texas granted these lands to Greer County. She parted with the title finally and forever. She granted them for public school purposes, which constituted a charitable use or trust. Greer County was capable of receiving the donation for the benefit of the children of that county, and did accept it. The change of sovereignty or of dominion over Greer County cannot change the statue or ownership of the trust property. It is similar in all respects under the law to a cession by Texas of the particular territory of Greer County to the United States, and in that event, had it occurred, Texas certainly could not have sustained a suit for forfeiture of this property, which she herself had devoted to charitable uses for the benefit of the children which at the time she claimed as the children of Texas. Greer County remains in its territorial entity the same that it was before. Presumably her inhabitants are the same. Her children of scholastic age are the beneficiaries in this charitable donation, and the same belongs to them. Their change of allegiance by the decision of this Court cannot be held to affect their rights in this fund without, we submit, overruling all the decisions bearing upon the question.

These authorities which we cite are abundant, and many more to the same effect could be collated, and they all point with unerring significance to the error of the Texas Courts in the ruling of which we complain.

We submit the case and ask of this Court that the judgment of the Court of Civil Appeals for the Third Supreme

Judicial District of Texas be reversed and the cause remanded with direction to that Court to render judgment in favor of Greer County, and that the State of Texas take nothing by its suit.

H. N. ATKINSON,
GEO. CLARK,
D. C. BOLINGER,
Counsel for Plaintiff in Error.

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JAMES H. McKENNEY

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 160.

GREER COUNTY, OKLAHOMA TERRITORY,
Plaintiff in Error,

vs.

THE STATE OF TEXAS,
Defendant in Error.

In Error to Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas.

Supplemental Brief of Plaintiff in Error in Reply to Brief of Defendant in Error.

H. N. ATKINSON,
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SUPREME COURT OF THE UNITED STATES.

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Supplemental Brief of Plaintiff in Error in Reply to Brief of Defendant in Error.

It being impracticable for counsel for plaintiff in error to appear and argue this cause at bar, they respectfully submit the following brief in argument, in reply to the brief filed by counsel for defendant in error, the State of Texas.

I.

Counsel for plaintiff in error in their brief (p. 6) in urging that there has been no impairment of the obligation of contract by the decision of the Texas court, and that there is no reference to any legislation affecting the contract, we beg to call attention of the Court to the provisions of the Act of the Legislature of the State of Texas under which this suit was brought. The Act of April 13, 1897, of the Texas Legislature. (General Laws of Texas of 1897, Chapter 72, page 86) provides as follows:

"Section 1. *Be It Enacted by the Legislature of the State of Texas*: That the four leagues of land heretofore patented to what is known as the territory of Greer County for free school purposes, under the provisions

of an Act entitled, "An Act to reserve and set apart three hundred and twenty-five leagues of land heretofore surveyed for the benefit of the unorganized counties as may have located their four leagues of school land, or any part thereof in conflict with valid prior locations or surveys, or which from any cause fail to get title to the four leagues of land they are entitled to under the law," approved April 7, 1883, be and the same is hereby set apart and appropriated for the support and maintenance of the Public Free Schools of this State.

"Sec. 2. That the Attorney-General of the State of Texas is hereby authorized to institute such proceedings as he deems necessary to recover said land against all adverse claims.

"Sec. 3. That all laws and parts of laws in conflict herewith be and the same are hereby repealed."

Counsel for defendant in error omitted to incorporate this statute in their brief, although incorporating some other statutes held relevant to the issues at bar. This statute clearly is a legislative move upon the part of the State of Texas to impair a contract, which the State had entered into with Greer County, and by which she had granted substantially to the children of Greer County four leagues of land, including the lands involved in this controversy.

Apart from that, authorities are not necessary before this Court, in view of the repeated decisions to that effect, that the obligation of the contract may be impaired by an act of either of its departments, executive, legislative or judicial; and the principle has been frequently extended to the impairment of the obligation of the contract by municipal subdivisions of a State. We do not cite authorities because they are familiar to the Court.

So there is nothing in the contention of defendant in error upon this point.

II

The contention of ~~plaintiff~~ defendant in error that although there might have been a cession of the territory of Greer County by Texas to the United States, yet the lands granted to the counties embracing this territory would not have followed

the cession but would have reverted to the State, is not only without authority to support such proposition and none are cited, but is directly against the great mass of authorities to the contrary, some of which cases have been cited in the original brief of plaintiff in error.

It is to be remarked that if this contention, which permeates the whole brief of defendant in error, that Greer County, Texas, was destroyed either by cession or by the decision of this Court in 1895, or as found by the trial Court, that Greer County never in fact had any legal existence, an inquiry is legitimate and arises necessarily upon the record as to why the State should have brought suit against Greer County, Oklahoma, and brought that County into this Court, if it is not the successor of Greer County, Texas, and had no interest in the controversy. The mistake of counsel for defendant in error consists in overlooking entirely the nature and purpose of the grant originally, while, as held by the Supreme Court of Texas in Cameron case, the title did pass by the issuance of patents to Greer County, Texas, yet it is manifest that the grant was to the school children of Greer County inhabiting that territory, and was for their benefit; and it is equally manifest from the authorities cited in the original brief of plaintiff in error that such grant being a charitable use necessarily vested a substantial right in the school children of the particular territory, which no subsequent action of the grantor, either executive, legislative or judicial, could revoke or impair. Counsel for defendant in error do not take the position that a grant of this character by a State, does not come within the category of charitable use, and therefore cannot be administered by a Court of Chancery, but even if such position had been taken it could not be maintained. The authorities all agree that a State may make a grant of this nature impressed with the character of charitable use as well as an individual; and the only intimation to the contrary is found in Perry on Trusts, wherein that author simply states the proposition, that if the legislation by general or State laws establishes schools, also appropriates money therefor and directs by public law how such money shall be raised and expended, such works are not charity within the meaning of the law and Courts of equity

have no jurisdiction to regulate and control them. In support of this proposition the author refers only to the case of Attorney General vs. Heelis, 2 Simmons & Stuart, Ch. Rep., p. 77, but an examination of that case shows that the Court there held distinctly that funds derived from a gift of the crown were charity funds to be administered by the Courts; but if the fund is raised by taxation upon the town for town improvements, the fund is not charitable to be administered by the Courts. (See 2 Perry on Trust, Sec. 707). This is the only case we have been able to find that at all squints at the universal doctrine laid down by all other authorities, and it seems that the text of Perry is not supported by the authorities cited, but on the contrary, the decision in Attorney-General vs. Heelis amply supports the doctrine contended for by plaintiff in error.

We therefore reiterate the proposition contained in our original brief, that this grant was a grant for charitable use and that no matter if Greer County, Texas, ceased to exist, and no matter whether Greer County, Oklahoma Territory, is its natural or legal successor, or otherwise, that it cannot affect the question; in either or both events a Court of Chancery, if necessary, will take charge of the funds and administer them as near as may be possible according to the intention of the grantor.

III.

The appeal of counsel for defendant in error at the close of their brief is as unique as they say the case is. The language of counsel is as follows:

> "This is a unique case so far as the facts are concerned. If the authorities cited in this brief do not afford a precedent for the resuming by the State of her ownership of this land, we submit the case with confidence that the Court in its wisdom will either find a precedent for such action, or, if necessary, will make one."

Counsel ought not to appeal either to the presumed legislative power of the Court or to its sympathies, especially in view of recent congressional action in behalf of defendant in error, which has taken place long after the trial of this cause, and after the preparation of briefs in the case. By the pro-

visions of an Act of Congress, making appropriation to supply deficiencies in appropriations for the fiscal year ending June 30, 1904, and for prior years and for other purposes, approved April 27th, 1904, the State of Texas, the defendant in error, it seems has been thoroughly reimbursed for all its expenditures made in Greer County from the origin of its claim to that County to the termination of such claim in 1895, by the following provision:

> "To pay to the State of Texas as reimbursement to said State for expenses incurred in maintaining a civil government and so forth in what was then known as Greer County, Texas, now known as Greer County, Oklahoma, as shown by reports to the Secretary of the Interior contained in House Document numbered Five Hundred and Seventy-One, Fifty-seventh Congress, First Session, and House Document numbered Five Hundred and Seventy-One, Part Two, Fifty-seventh Congress, First Session, Fifty Thousand, Eight Hundred and Seventy-four and Fifty-three One-hundredths Dollars, and the acceptance of payment hereunder shall be in full for all claims of the character herein provided for by the State of Texas."

Referring back to the reports of the Secretary of the Interior as explanatory of the provision, the Court will find that on April 22, 1902, the Secretary of the Interior as appears in Document numbered Five Hundred and Seventy-one House of Representatives, Fifty-seventh Congress, First Session, submitted his report in accordance with "An Act to provide for the establishment of the intersection of the true one hundredth meridian with Red River, to ascertain the amount of taxes collected by the State of Texas in what was formerly known as Greer County, and the expenditures made on account of said County by said State, and for other purposes," approved January 15, 1901, and which is quoted in length in the report, that Texas filed in that department a statement of her claims, setting forth what lands were patented by the State to Greer County for school purposes; what taxes were collected by the State from inhabitants of Greer County or upon lands or other property located therein from Eighteen Hundred and Sixty to Eighteen Hundred

and Ninety-six; the total amount paid by the State to Greer County for school purposes, other than lands, during that period and the total of all other expenses claimed to have been incurred by the State during that period for the purposes and objects named in said Act of Congress. This claim was allowed in said report of the Secretary of the Interior for the sum of Eighty-eight Thousand, Five Hundred and Sixteen and Thirty-five one-hundredths Dollars. (p. 7). And it was found by the Secretary of the Interior that the State of Texas had received by way of taxes and rental of lands in said County, the sum of Fifty-three Thousand, Nine Hundred and Ninety-three and Fifty-two one-hundredths Dollars, leaving a balance for which the State had compensation the sum of Thirty-four Thousand Five Hundred and Twenty-two and Eighty-three one-hundredths Dollars. (p. 7). The claim of the State is set forth at length in said report on pages 8 to 36, accompanied with vouchers and statements all of which appear itemized and printed.

Subsequent thereto, to-wit: on June 10, 1902, the Secretary of the Interior submitted a report, which is found in House of Representatives, Document Five Hundred and Seventy-one, Part Two, Fifty-seventh Congress, First Session, in which the Secretary upon the further claim of Texas, reporting the decision of the Supreme Court of Texas in case of State of Texas vs. Cameron, and in which the State lost, and which involved the same lands now in controversy here, an additional amount of Fifteen Thousand Seven Hundred and Fourteen Dollars. In said report, the following statement is made:

> "In said original report it was set forth that the State of Texas had patented to Greer County four leagues of land for school purposes, and that said land was sold by the County in two separate tracts, one of 10,476 acres and one of 7,236 acres, at a price of $1.05 per acre; that the present value thereof was $1.50 per acre; that the State had instituted proceedings in the Court to recover the title to said land and that because of the pending litigation the State had not presented a claim for the value of said land. The State has now filed in this department a certified copy of a decision of

the Supreme Court of the State of Texas rendered May 29, 1902, against the State, and in favor of the grantee of the County for the tract of land, containing 10,476 acres; the value of this land at $1.50 per acre is $15,714."

The Secretary of the Interior thereupon introduced the other items, reported as due to the State of Texas in the sum of $15,714, which, added to the original amount of $34,522.83, and a small amount of $637,70, making the sum of $50,874.53, which is carried forward in the appropriation bill hereinbefore set out, and which amount the State of Texas has received from the United States government.

It will appear from this report, page 2, that Greer County had sold all the land received by it from the State of Texas before the decision of this Court establishing that territory as a part of the United States and not of Texas, which fact also appears on page 11 of Document numbered Five Hundred and Seventy-one, House of Representatives, Fifty-seventh Congress, as stated in the application of the State for reimbursement from the following paragraphs:

"On the 12th day of January, 1888, under the authority of an order of the Commissioners' Court of said Greer County, F. B. Duke, county judge of said county, sold and conveyed to D. W. Strain and A. C. Swinburne 10,476 acres of said lands at the price of $1.05 per acre, in the aggregate $11,000, in cash, as recited in said deed, and in the proceedings of said Commissioners' Court.

"It further appears from said Court proceedings that the amount of $11,000 was, by the officers of the County, invested in the purchase of $11,000 of the bonds of the County issued for the purpose of building a jail.

"The balance of said four leagues, 7,236 acres, was also sold to said Strain and Swinburne under authority of an order of said Commissioners' Court for $1.05 per acre, in the aggregate $7,597.80. No part of the purchase money was paid in cash, but a note with vendor's lien was executed for the purchase money, and afterwards, upon judgment and foreclosure of lien, the land was sold and bought in by Greer County, and by proper sheriff's deed the title to this 7,236 acres was revested in Greer County.

"After the decision of the Supreme Court of the United States in the case of the United States vs. Texas (162 U. S. 1) the legislature of the State of Texas passed an act appropriating the four leagues of Greer County school lands aforesaid to general free school purposes, and directed the Attorney-General of the State to bring suit for the same.

" Under the provisions of this act suit was instituted in the District Court of Travis County, Texas, by the Attorney-General against Greer County, Oklahoma, and William Cameron, who had bought the 10,476 acres from Strain and Swinburne, for the entire four leagues. Upon a trial in the District Court of this cause the State recovered against Greer County, Oklahoma, the 7,236 acres, from which judgment no appeal was prosecuted, and against William Cameron for the 10,476 acres, from which judgment appeal has been taken and perfected, and this cause is now pending in the Court of Civil Appeals for the Third Judicial District.

" Under the laws of Texas the judgment aforesaid against Greer County, Oklahoma, may be taken into the Court of Appeals upon writ of error at any time within one year from the date of the judgment of the District Court.

"The State of Texas makes no claim for and on account of the four leagues of school land patented to Greer County, aforesaid, at this time, for the reasons above set out, but prays to be allowed the right to present a claim, under the act of Congress under which this proceeding is had, for the value of whatever part, if any, of said land she may ultimately lose by final judgment of her Courts in the causes aforesaid."

These facts are plain from this:

(1) That the land sued for in this case, to-wit: 7,236 acres, was sold by Greer County when she was a part of Texas to Strain and Swinburne, but that afterwards Greer County by foreclosure of the vendor's lien bought in this 7,236 acres again and title was revested in Greer County.

(2) The balance of the land, 10,476 acres, became the property of Cameron and were involved in the suit decided adversely to the State in Cameron vs. State, 95 Tex., 545. The Supreme Court of Texas holding in that case that the patents were valid and passed the title to Greer County, and

that the Cemerons held superior title to the State.

(3) That the State of Texas has been reimbursed not only for every expenditure made by her in Greer County during the existence of her claim to that County, but had been even reimbursed by the government for the 10,476 acres of these lands owned by the Camerons; and it was, at least, inferable that in case she does not prevail in her suit in this cause the government will be equally beneficent and liberal and reimburse her, if she asks for it, for the value of these lands.

We have taken the liberty to refer to these public records of the executive department upon the supposition that the Court would take judicial notice thereof.

N. Y. Indians vs. U. S., 170 U. S., 22-42.
Heath vs. Wallace, 138 U. S., 584.
Underhill vs. Fernandez, 168 U. S., 253.
The Paquelle-Habina, 175 U. S., 700.
Jones vs. U. S., 137 U. S., 216.
Kennett vs. Chambers, 14 How., 47.
U. S. vs. Leschmaker 22 How., 405.
Romero vs. U. S., 1 Wall., 742.
The Delaware, 161 U. S., 473.

We submit the cause upon all the propositions stated in the original brief of plaintiff in error as well as in this supplemental brief, and reiterate that this grant by Texas was irrevocable, no matter what became of Greer County, in that it was a donation for charitable use and that the State of Texas can take no action by which said lands can revert to defendant, but that the lands are funds created thereby and must be and remain the property and for the use and benefit of the school children of Greer County, who are the beneficiaries under the donation; and that the extent to which Texas can go in the matter is by proper judicial proceedings in equity to see that the charity is duly administered in accordance with the intention of the original donation.

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GEO. CLARK,
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Counsel for Plaintiff in Error.

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SUPREME COURT OF THE UNITED STATES.

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OCTOBER TERM 1904.

No. 160.

GREER COUNTY, OKLAHOMA TERRITORY,
PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS, DEFENDANT IN ERROR.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS.

BRIEF OF COUNSEL FOR THE STATE OF TEXAS, DEFENDANT IN ERROR.

Gammel-Statesman Pub. Co., Austin, Texas.

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SUPREME COURT OF THE UNITED STATES.

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BRIEF OF COUNSEL FOR THE STATE OF TEXAS, DEFENDANT IN ERROR.

This case arises out of the anomalous condition of affairs which existed for a number of years with regard to the status of the territory between the north and south forks of Red River and the 100th degree of longitude. This territory was claimed by the State of Texas as part of her territory and was in 1860 created into a county of the State under the name of Greer County.

The county remained unorganized; which was the condition at that time and is still of a number of counties in Texas; until 1886, when an act was passed by the Legislature providing for its organization, under the provisions of which it was organized during that year, as Greer County, Texas. The following year (1887), under a provision of

the general laws of the State (arts. 4280-1, Revised Statutes) authorizing the issuance to each unorganized county in the State upon its organization, of patents for four leagues of land for school purposes, patents were issued to Greer County for four leagues of land lying in Hockley and Cochran counties in said State. Afterwards under the provisions of, and in conformity with, the general laws of Texas, the Commissioners Court of Greer County, Texas, sold and conveyed to Strain & Swinburne (who afterwards conveyed to William Cameron) all of said four leagues, except 7236 acres.

After the judgment and decree of this court in the case of The United States v. The State of Texas (162 U. S., 1-90), rendered March 16, 1886, whereby the question of the ownership of the territory referred to was decided adversely to the State of Texas, and in favor of the United States, the point decided being that this terirtory was not included within the boundaries of the State of Texas, an act was passed by the Congress of the United States entitled "An Act to establish and provide for the government of Greer County, Oklahoma," approved May 4, 1896. (Chap. 155, Acts 54th Congress, 29 U. S. Statutes at Large, p. 113.) Previously Congress had passed an act "To provide a temporary government of the Territory of Oklahoma," approved May 2, 1890. (Chap. 182, Acts 51st Congress, 26 U. S. Statutes at Large, p. 81.) Section 25 of this act provides that it shall not apply to what is known as Greer County until the question of title thereto is established, and directs the Attorney-General to institute the suit above referred to for that purpose. Greer County, Oklahoma, when organized under the provisions of the Act of May 4, 1896, set up claim to that portion of the four leagues of school land patented to Greer County, Texas, which had not been disposed of by Greer County, Texas.

Suit was instituted by the Attorney-General of the State of Texas against the heirs of William Cameron, deceased, and Greer County, Oklahoma Territory, to recover the four leagues of land. In the trial court the defendants pleaded separately, the heirs of Cameron claiming title to 10,476 acres sold and conveyed by Greer County, Texas, to Strain & Swinburne, and Greer County, Oklahoma, claiming title to the balance. In the trial court there was a severance, and judgment for the State against all of the defendants, the

court finding, as matter of law, that the territory in question never having been a part of the State of Texas, the act attempting to create the same into a county of the State was without authority and void, and that the issuance of patents to said county as a duly organized county of Texas was without authority and the patents void.

Upon appeal to the Court of Civil Appeals by the heirs of William Cameron the judgment of the District Court was affirmed (67 S. W. Rep., 348), but on writ of error to the Supreme Court this judgment was reversed and judgment rendered for the Camerons for the land claimed by them (95 Texas Rep., 545), the court holding that the title of purchasers who had bought from Greer County, Texas, while it was recognized as a county of this State should be protected. In their opinion the court, however, says: "The four leagues of land having been conveyed to Greer County in trust, for the benefit of the public schools within the county, as a county of the State, and the county having ceased to be a county of the State, whether its successor, Greer County, in the Territory of Oklahoma, can hold such of the lands as are not conveyed, is a different question. It is not before us in this case."

In the case at bar, upon writ of error to the Court of Civil Appeals, the judgment of the District Court was affirmed. (Opinion of Court of Civil Appeals, R., p. 30.) Writ of error to the Supreme Court from this judgment was applied for and refused. (R., p. 40.)

Section 6, Art. 7 of the Constitution of the State of Texas is as follows:

"Sec. 6. All lands heretofore or hereafter granted to the several counties of this State for educational purposes, are of right the property of said counties respectively, to which they were granted, and the title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part, in manner to be provided by the Commissioners Court of the county. Actual settlers residing on said lands shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by said court, which price shall not

include the value of existing improvements made thereon by such settlers. Said lands, and the proceeds thereof, when sold, shall be held by said counties alone as a trust for the benefit of public schools therein; said proceeds to be invested in bonds of the United States, the State of Texas, or counties in said State, or in such other securities, and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments; the interest thereon, and other revenue, except the principal, shall be available fund."

The various acts of the Legislature of the State granting lands to counties for school purposes are printed as an Appendix to this brief.

By the provisions of the Act of March 13, 1875, to each county *in this State* was given four leagues of land. Provision was afterwards made for surveying and setting apart 325 leagues out of which each unorganized county when it was afterwards organized was to receive patents for its four leagues, which the Commissioner of the General Land Office was directed to issue. (Appendix.)

It may be noted that these various statutes which show the essential nature of the grant are not referred to or noticed in the brief for plaintiff in error.

The case is before this court on four assignments of error. (R. pp. 45-46.)

As to the first and second assignments of error it may be said that they rest upon a total misconception as to the legal conclusions of the Court of Civil Appeals, and the grounds upon which the judgment of the District Court was affirmed. The trial court found, as matter of law, that the patents were void *ab initio,* for the reason that Greer County, Texas, never in fact had any legal existence and for this reason did not find it necessary to inquire further. After the decision of the Supreme Court in the Cameron case to the effect that the patents were not void, having been issued at a time when the political department of the government claimed the territory embraced in Greer County as a part of the territory of Texas, it became necessary to inquire further as to what effect the wiping out of Greer County Texas, had upon the title to those lands still undisposed of. (Cameron Heirs v. The State, 95 Texas, 545.)

This case was before the Court of Civil Appeals upon

this question, and it was held that, conceding the patents to have been valid and to have conveyed good title to Greer County, Texas, and even conceding that Greer County, Oklahoma Territory, plaintiff in error here, succeeded to the legal title granted by the patents, "still, as the lands referred to were granted for public school purposes, and as Greer County (Oklahoma Territory) held them in trust for such purposes, still as Greer County will not and can not use them for such purposes within the limits of Texas, the State was entitled to have the patents canceled." (See opinion of Court of Civil Appeals, R. p. 30.) To this proposition none of the assignments are addressed, and the same may be said as to the brief of plaintiffs in error, and as to the motion for rehearing in the Court of Civil Appeals and the application for writ of error to the Supreme Court of Texas. (R. pp. 32-39.)

The Court of Appeals might have further held, and undoubtedly would have so held, if it had been considered necessary to sustain the judgment of the trial court, that in no aspect of the case had Greer County, Oklahoma, plaintiff in error here, succeeded to the title granted to Greer County, Texas, by the patents.

The Constitution of Texas (Art. IX), authorized the Legislature to create counties for the convenience of the people and to change their boundaries at will, subject only to certain limitations, as to area. It has been a common practice to create new counties out of portions of existing ones, and while it has not often been done, still the Legislature has exercised the power to disorganize an organized county, abolish its county government, and attach the territory to another county for governmental purposes. They are municipal corporations. (Constitution, sec. 1, art. XI; art. 789, Revised Statutes, 1895.)

It was to this entity created by the Legislature, as a legal subdivision and municipal corporation of the State of Texas, that the four leagues of land were granted, and when this entity became nonexistent, as the effect of the decision of this court in the case of The United States v. Texas, it can no more be said that the subsequently created entity of Greer County Oklahoma, succeeded to the title to these lands, than it succeeded to any of the other rights inuring to Greer County, Texas, as a legal subdivision of the State, for instance, in its school lands or school fund, its

University lands, and the endowment of the various other eleemosynary and educational institutions out of the public lands of the State, in all of which Greer County, Texas, as long as it remained a legal subdivision of the State, and the inhabitants thereof as long as they remained citizens of such legal subdivision, were entitled to share. Counsel for plaintiff in error have never seemed to grasp the essential facts that this grant was to Greer County, Texas, as a municipal corporation and legal subdivision of the State in trust for the benefit of the inhabitants as citizens of the State of Texas, and of the public schools established by the State and supported by the State in that county, and subject at all times to legislative control, and that plaintiff in error, Greer County, Oklahoma, is in all of the essential features of this case as distinct and alien to Greer County, Texas, as is any other county of Oklahoma. It is of no consequence, whatever, that in providing for the organization of a territorial government for Oklahoma Territory by Congress, the same territory embraced in the Texas county is embraced in the Oklahoma county and the old name is retained.

In all of their pleadings and throughout their brief counsel speak of Greer County, the grantee in the patents, and Greer County, the plaintiff in error in this case, as one and the same, and address themselves only to a case resting upon this premise. Argument is unnecessary to show the fallacy of this position.

We submit that the third and fourth assignments of error are equally foreign to the merits of this controversy.

Whatever contract there was by virtue of the patents, was between the State of Texas and Greer County, Texas, a legal subdivision of the State, now nonexistent, and if there has been any impairment of this contract, it does not in any way concern plaintiff in error, or affect its rights. But there has been in no sense an impairment of the obligation of this contract by the decisions of the Texas courts, and finally neither in the judgment of the State court nor in the assignments of error in this court, nor in the brief of counsel, is there any reference to any *legislation* with reference to the matter. The case was decided upon the general principles of law governing the case and applicable to the facts

presented. The provisions of the Federal Constitution (section 10, article 1) do not apply.

Knox v. Exchange Bank, 12 Wall., 379.

Central Land Co. v. Laidley, 159 U. S., 103-109.

The effect of the judgment of the State court was in no sense the taking of private property for public use without making compensation, as charged in the fourth assignment of error, even if, as is assumed by plaintiff in error, there were any inhibition in the Federal Constitution, of such action by the State.

As to the fifth assignment of error, while it may be true as stated by the Supreme Court of Texas in their opinion in the Cameron case (95 Texas, 545-552), that the title of Cameron "is not different from what it would have been had Greer County been indisputably a part of the State from its annexation until 1895, and had it, at the latter date, been ceded to the United States," it does not necessarily follow that this would be true as to the title set up by plaintiff in error here. In that case Cameron had succeeded, by regular conveyances, to the title vested by the patents in Greer County, Texas. There has been in no sense a succession by the plaintiff in error to that title as to the lands claimed here. Had there, however, been a cession of this territory to the United States, we submit that the lands granted to the *county* embracing this territory, would not have followed the cession but would have reverted to the State. Such cession would have destroyed the corporate entity known as Greer County, Texas, to which as a legal subdivision and municipal corporation of the State the grant was made. There could be no question of the power of the United States to deal with such territory as it saw fit: to create it into one or many counties, or to destroy its separate identity by making it a part of some other county, or other governmental subdivision. It would have been utterly subversive of the purposes of the grant to continue it to this territory and its inhabitants in their radically changed relations to the State. A cession of this territory by Texas to the United States in this respect would have had the same effect as the judgment of this court referred to. Such cession would have terminated the existence of Greer County, Texas, and there would have been no one to take and

hold the title to the lands and carry out the trust upon which they were granted; and it would also have terminated the relationship of the inhabitants of the territory to the State of Texas, as beneficiaries of the trust. The State could exercise no supervision or control over the action of the authorities of Greer County, Oklahoma, in regard to these lands or the proceeds when sold, as was contemplated, as a condition of the grant, as stated in quotation from Milam Co. v. Bateman (54 Texas, 165) on page 7 of brief of plaintiff in error.

The case for defendant in error is presented upon the following propositions:

First.

Greer County, Texas, the grantee in the patents, was a political subdivision and a de facto municipal corporation of the State of Texas, and its existence as such was terminated by the decision of this Court in the United States v. Texas (162 U. S., 1).

Constitution of Texas, art. 9, sec. 1; art. 11, sec. 1.

Revised Statutes of Texas (1895) arts. 756, 789.

Second.

The grant of four leagues of land for school purposes was not to the territory embraced within the limits of Greer County, nor to the inhabitants thereof, but to Greer County as a political subdivision and municipal corporation of the State of Texas, in trust for the benefit of the public free schools of the county as such, and to be administered under the general control and supervision of the legislature.

Constitution 1875, art. 7, sec. 6.

Act January 26, 1839.

Act February 5, 1840.

Act January 16, 1850.

Act March 13, 1875.

Act April 7, 1883 (Revised Statutes, 1895, arts. 4280-4281).

(This last act is the one upon which the patents were

issued, as stated in the face of the patents, and authorizes the issuance of patents to each county *of the State*, as it is organized, out of the 325 leagues surveyed for that purpose under the Act of March 16, 1882.)

Revised Statutes (1895) arts. 3902, 4270-4271, 4272. (See appendix.)

Palo Pinto Co. v. Gano, 60 Texas, 251.

Worley v. The State, 48 Texas, 12.

Third.

Upon the decision of this Court in the Greer County case (162 U. S., 1) and the surrender by the political department of the State government of all claim to or right of control over, the territory formerly embraced in the geographical limits of Greer County, Texas, the title to the lands involved in this suit was extinguished, and the lands reverted to the State.

1 Dillon Mun. Corp., sec. 169a.

Merriweth v. Garrett, 102 U. S., 472, 512, 513.

Bass v. Fontleroy, 11 Texas, 698, 706.

Fourth.

The grant was not a contract within the meaning of section 10, art. 1, Constitution of the United States.

East Hartford v. Hartford Bridge Co., 10 How., 491.

Newton v. Commissioner, 100 U. S., 566.

Fifth.

There is no question presented in the record, of legislation impairing the obligation of a contract.

Central Land Co. v. Laidley, 159 U. S., 103-109.

The answer of plaintiff in error, and its entire case as presented in the brief of counsel seem to be based upon the assumption that the four leagues of school land in controversy were granted and patented to it, notwithstanding it is sued as an organized county of the Territory of Oklahoma; and as such answers and claims the lands herein involved.

For instance in paragraph 2 of its answer (R. p. 5) it is said: "And for special demurrer to plaintiff's said amended original petition this defendant says that the allegations of plaintiff in said petition that the patents issued by L. S. Ross, Governor of the State of Texas, *to this defendant,* Greer County," etc. And again, in paragraph 5 (R. p. 6) appears the following:

"And for a further answer to plaintiff's said first amended original petition, the defendant, Greer County, comes and shows to the court that it is a body politic and corporate duly chartered and organized as such and was such body politic and corporate, on, to wit, *the 18th day of July, 1887, and for many years prior thereto,* and is now such body politic and corporate. This defendant further avers that the patents issued *to this defendant* on, to wit, July 18, 1887, were in all respects valid and legal patents and were issued in conformity to the authority and direction of the law-making department of the State of Texas, to wit, by virtue of divers and sundry acts of the Legislature of the State of Texas, and upon the issuance and delivery of said patents a full fee simple title to the lands described in plaintiff's petition was vested *in this defendant, Greer County,* by the terms of said patents."

Other allegations in the answer are to the same effect.

Now it happens that after the decision of the Supreme Court in the Greer County case the same territory formerly composing Greer County, Texas, was created by act of Congress, a county of the Territory of Oklahoma, of which it had become *de facto* as well as *de jure* a part, and of which it had always been *de jure* a part, under the name of Greer County. The existence of plaintiff in error dates from the passage of this act, May 4, 1896. (Chap. 155, acts Fifty-fourth Congress.)

It must be that upon this accidental circumstance of being the same territory and having the same name counsel predicate their assumption that it is the same thing, the same corporate entity.

Neither argument nor authority is necessary to show the utter fallacy of this assumption.

So far as the purpose of this argument and the decision of this case are concerned the two corporations are as foreign to, and as distinct from, each other as any other county

in Texas and any other county in Oklahoma Territory, or in any other State of the Union.

Nor is there any analogy between this case and the one where a municipal corporation is dissolved by act of the Legislature and another municipal corporation created by the Legislature of the same State embracing the same inhabitants and territory as in Broughton v. Pensacola, 93 U. S., 266, and other cases collected in notes to section 170, 1 Dillon Municipal Corporations, 251, 252.

Over Greer County, Texas, the grantee in the patents, the Legislature had plenary authority, limited only by the provisions of the State Constitution. By it it was created and by it it could be at any time destroyed as a municipal corporation and political subdivision of the State. It could at any time be disorganized and afterwards reorganized with the same or different boundaries. It held the school lands and their revenues and rents, together with the proceeds when sold, as a trustee only, for the benefit of the public free schools, established by the State as a part of her general system of public education, in Greer County, as a county of Texas, and subject, in the administration of the trust, absolutely, to the legislative will.

If it be argued that the grant was to Greer County for the benefit of the people, the reply is that it was for the benefit of the people as citizens of Texas, and not as a mere aggregation of people living on a certain portion of the earth's surface. The language of the statute is that the lands shall belong to the *county* (Art. 4270, Rev. Stats.) and that the proceeds when sold shall be held by such county "alone as a trust for the benefit of public free schools therein." (Art. 4271, Rev. Stats.)

The Legislature of Texas has absolutely no control over Greer County, Oklahoma Territory, in the administration of the trust. Indeed, if the title of defendant to the lands sued for be upheld, the county will take the lands discharged of any trust and may dispose of them as the political authority of the Territory may see proper.

This is a unique case, so far as the facts are concerned. If the authorities cited in this brief do not afford a precedent for the resumption by the State of her ownership of these lands, we submit the case with confidence that the court in

its wisdom will either find a precedent for such action, or, if necessary, make one.

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Attorney-General.

T. S. Reese
Assistant Attorney-General.
For the State of Texas, defendant in error.

APPENDIX.

Constitution of Texas (1875). (Art. 7, Section 6.)

"Sec. 6. All lands heretofore or hereafter granted to the several counties of this State for educational purposes are of right the property of said counties respectively to which they were granted, and title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part, in manner to be provided by the commissioners court of the county. Actual settlers residing on said lands shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by said court, which price shall not include the value of existing improvements made thereon by such settlers. Said lands and the proceeds thereof, when sold, shall be held by said counties along as a trust for the benefit of public schools therein; said proceeds to be invested in bonds of the United States, the State of Texas, or counties in said State, or in such other securities and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments; the interest thereon and other revenue, except the principal, shall be available fund."

Act January 26, 1839.

"Sec. 1. Be it enacted by the Senate and House of Rep-

resentatives of the Republic of Texas in Congress assembled, That each county of this Republic shall have three leagues of land surveyed and set apart for the purpose of establishing a primary school or academy in said county, which said land shall be located and surveyed by the county surveyor or his deputy, in each county, and be paid the fees now allowed under the land law, out of the county treasury: Provided, There is that quantity of good vacant land in the counties: And further provided, That said land may be surveyed in any sized tracts: Provided, That said land shall not be surveyed in tracts less than one hundred and sixty acres."

"Sec. 6. Be it further enacted, That none of the lands appropriated and set apart by this act of for the purpose of education, shall be disposed of in any manner except by lease until the expiration of three years, and none of said lands shall be disposed of by lease for a longer term than three years."

Act of January 16, 1850.

"Sec. 1. Be it enacted by the Legislature of the State of Texas, That each and every county in this State, which has been established and organized since the sixteenth day of February, in the year one thousand eight hundred and forty-six, or which may hereafter be established and organized by the law, shall have surveyed and set apart four leagues of land for the purpose of education, which locations and surveys may be made upon any vacant and unappropriated lands within the limits of the State."

Act of March 13, 1875.

"Section 1. Be it enacted by the Legislature of the State of Texas, That all organized counties in this State, which have not received a grant of lands for purposes of education, and all counties hereafter created, shall be entitled to have issued to each of them certificates for four leagues of land, to be located anywhere on the unappropriated public domain of this State."

Revised Statutes 1895. (Act of 1883.)

"Art. 3902. The proceeds of any leasing or renting of lands heretofore granted by the State of Texas to the several counties thereof for educational purposes shall be appropriated by the commissioners courts of said counties in the same manner as is provided by law for the appropriation of the interest on bonds purchased with the proceeds of the sale of such lands; and the proceeds arising from the sale of timber on said lands or any part thereof shall be invested in like manner as the Constitution and law requires of proceeds of sales of such lands, and it shall be unlawful for the commissioners court of any county to apply said proceeds, or any part thereof to any other purpose, or to loan the same, or to invest the same, except as above required."

"Art. 4270. All lands granted to counties for educational purposes, under the provisions of this chapter or any former law, shall belong to such counties respectively, and the titles thereto shall be fully vested in said counties; and no adverse possession or limitation shall ever be available against the title of any county to such lands."

"Art. 4271. Each county may sell or dispose of the lands granted to it for educational purposes in such manner as may be provided by the commissioners court of such county; and the proceeds of any such sale shall be invested in bonds of the State of Texas, or of the United States, and held by such county alone as a trust for the benefit of public free schools therein, only the interest theron to be used and expended annually."

"Art 4272. In the sale of county school lands, under the provisions of the preceding article, the actual settlers residing on said lands shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by the commissioners court, which price shall not include the value of existing improvements made thereon by such settlers."

"Art. 4280. The three hundred and twenty-five leagues of land heretofore surveyed under the provisions of an act

entitled "An act to provide for designating and setting apart three hundred leagues of land out of the unappropriated public domain, for the benefit of the unorganized counties of the State, and to provide for the survey and location of same," approved March 16, 1882, is set apart and shall constitute a reservation out of which each of the unorganized counties of this State, as it may be organized, shall be entitled to receive four leagues of land for free school purposes, and out of which such organized counties of this State as may have located their certificate for four leagues of school land in conflict with or upon land already appropriated by valid prior location and survey, or which from any cause have failed to get title to their four leagues of school land, shall be entitled to receive so much of said land as may be necessary to secure to any such county the number of acres it may be entitled to from any cause, or that may be declared to be in conflict by the Commissioner of the General Land Office."

"Art. 4281. Each of said leagues of land shall be numbered by the Commissioner of the General Land Office, in the order in which it was surveyed by the contractor or contractors, beginning at number one and extending to three hundred and twenty-five, and as each of the unorganized counties in the State shall be organized such county shall be entitled to the first four leagues out of the reservation authorized by the foregoing provisions, which shall not have been patented to other counties for free school purposes. Upon the payment to the Treasurer of the State the actual cost of surveying fees and legal interest thereon from time of payment by the State, and upon the payment of such costs and interest, the Commissioner of the General Land Office is required to issue patents to said county for four leagues of land as above provided, but said counties shall be required to pay patent fees for said patents."

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Clerk

No. 160.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

GREER COUNTY, OKLAHOMA TERRITORY,
PLAINTIFF IN ERROR,

v.

THE STATE OF TEXAS, DEFENDANT IN ERROR.

IN ERROR TO COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

SUPPLEMENTAL BRIEF OF DEFENDANT IN ERROR.

Gammel-Statesman Pub. Co., Austin, Texas.

C. A. Culberson,
of counsel.

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SUPPLEMENTAL BRIEF OF DEFENDANT IN ERROR.

We beg the indulgence of the court for a brief reply to the supplemental brief filed for plaintiff in error.

Reference is made in this supplemental brief to an Act of the Legislature of Texas of April 13th, 1897, setting apart and appropriating the four leagues of school land patented to Greer County, Texas, to the support of public free schools, and directing the Attorney-General to bring suit to cancel the patents issued therefor.

An inspection of the record will show that the right of the State to recover was not predicated upon this statute, nor has the judgment of the State court been attacked on the ground that *this statute* impaired the obligation of the

contract arising upon the patents. The State sought recovery upon grounds entirely independent of this statute and the judgments of the trial court and Court of Civil Appeals are based entirely upon other grounds.

The contention of plaintiff in error, as shown by the third assignment of error in the Court of Civil Appeals (Rec., p. 25), the motion for rehearing (Rec., p. 32), the third assignment of error in the application for writ of error to the Supreme Court of the State (Rec., p. 38), and the third assignment of error in this court (Rec., p. 46), is that the *judgment of the State courts* impaired the obligation of contract in violation of the Federal Constitution.

Very properly no reference was made by counsel for plaintiff in error in their assignments of error, or in their brief, to this Act of 1897, as it in no way affected the decision of the case, and for this reason no reference is made to it in brief for defendant in error.

Unquestionably the Legislature of Texas assumed, after the decision in the case of United States v. Texas, that these lands had reverted to the State and proceeded to make proper appropriation of them, and inasmuch as it was known that Cameron and Greer County, Oklahoma, set up claims adverse to the State, the Attorney-General was directed to bring suit to recover the lands. The State might have taken possession of the lands with strong hand. Surely, it should take no detriment from the fact that it rather seeks to recover them in the due and orderly course of legal procedure. It is quite apparent from the record that consideration of the Act of 1897 referred to did not enter into the case, and that the judgment of the State courts would have been the same if this Act had never been passed. Upon this point we will stand by what was said by this court in Central Land Co. v. Laidley (159 U. S., 109):

"In order to come within the provision of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of contracts, not only must the obligation of a contract have been impaired, but it must have been impaired by some act of the Legislative power of the State, and not by a decision of its judicial department only."

It is cheerfully admitted that if the plaintiff in error had any rights in the premises they could not be divested by the

Act in question. No other contention has ever been made by the State, and there was no necessity for any reference to the Act.

It seems to us entirely irrelevant to this case that the United States have reimbursed Texas for money expended in providing a government for the territory comprising Greer County, in the support of education and the enforcement of the laws.

In pursuance of an Act of Congress, Texas presented her claim to the Secretary of the Interior charging itself with all money received from Texas, and rent of lands (none had ever been sold), and crediting itself with all money paid out for governmental purposes from the date of the creation of Greer County to the date of its severance, *de facto* as well as *de jure*, from Texas as the effect of the decision of this court, and the balance in favor of Texas has been paid upon the report of the Secretary of the Interior. There has also been paid to Texas by the United States, upon a supplemental report of the Secretary of the Interior, the value of the 10,476 acres of the four leagues of school lands patented to Greer County, Texas, which had been sold by Greer County, Texas, to Wm. Cameron, whose title had been upheld by the State court. (Cameron Heirs v. State, 95 T. R., 545.)

The balance of the four leagues, being the 7236 acres involved in the suit, was sold by Greer County, *Texas*, to Strain & Swinburne on a credit, and afterwards by virtue of judgment, foreclosure of vendor's lien and sheriff's sale, the title to this land was revested in Greer County, *Texas*. All of this was before the decision of this court in United States v. Texas, and before the plaintiff in error, Greer County, *Oklahoma*, had existence. Afterwards Greer County, Oklahoma Territory, plaintiff in error, upon coming into existence, set up its claim to this 7236 acres, hence this suit.

It is true also that if the judgment of this court should be against the State, the United States would be obligated to refund to Texas the value of the land involved, as it has that lost to Cameron, and we entertain no doubt that the United States will faithfully comply with this obligation.

Nevertheless, Texas does not consider that it would be acting in good faith with the United States to abate any effort to recover these lands, on account of the fact that the loss (if it loses) will eventually fall upon the United States.

The supplemental brief of plaintiff in error must be our excuse for this reference to matters which appear to us to be wholly irrelevant. It surely can not affect the question of title here involved that the United States has settled fairly with Texas for her expenditures on account of Greer County; has paid her for the Cameron lands lost to Texas, the purchase money of which was invested in a jail for Greer County; and will pay her for the lands here involved if they are awarded to Greer County, Oklahoma.

In the concluding paragraph of the original brief for defendant in error, the case is submitted "with confidence that the court in its wisdom will either find a precedent for such action (the resuming by the State of the ownership of the lands) or make one." It seems to us an extraordinary view to take that it would be judicial legislation for the court to *make* a precedent by the application of settled principles of law to a novel state of facts for which no precedent could be found.

(See supplemental brief of plaintiff in error, page 4.)

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.....,
Attorney-General.

T. S. Reese
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Assistant Attorney-General. Counsel for the State of Texas, Defendant in Error.

C. A. Culberson,
of counsel.

Supreme Court of the United States.

No. 160.—October Term, 1904.

Greer County, Oklahoma Territory, Plaintiff in Error, *vs.* The State of Texas. } In error to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas.

[March 20, 1905.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a suit brought by the State of Texas to recover certain lands in Hockley and Cochran Counties, Texas, for which patents were issued to Greer County, Texas, on July 18, 1887, under color of the general laws of the State granting four leagues of land to each county of the State for school purposes. Texas Gen. Laws, 1883, c. 55. Greer County, Texas, was created by an act of February 8, 1860, and was organized as a county in 1886. In March, 1896, it was decided by this court that the territory known as Greer County belonged to the United States and not to the State of Texas. *United States* v. *Texas*, 162 U. S. 1. Thereupon by act of Congress of May 4, 1896, c. 155, the same territory was organized as Greer County, Oklahoma, the present defendant, plaintiff in error. 29 Stat. 113. On April 13, 1897, Texas passed a law purporting to set aside the land in controversy for the support of schools in Texas and directing proceedings to recover the land against all adverse claims. Gen. Laws, 1897, c. 72. Then this suit was brought. The defendant, among other things, set up that the State was attempting to impair the obligation of its grant.

The case was heard on agreed facts and the State District Court decided in favor of the State on the ground that the general laws of Texas authorized patents to be issued to the counties of Texas only, and that therefore the patents were void. Another suit was brought against a purchaser from the *de facto* Texas county of a part of the land, in which the Supreme Court of the State decided that the purchaser got a good title, holding that the action of the State Legislature still was conclusive on the Court notwithstanding the decision in *United States* v. *Texas*. *Cameron* v. *State*, 95 Texas, 545. The present cause was taken to the Court of Civil Appeals, which distinguished *Cameron* v. *State*, and affirmed the judgment on the different ground that the grant was for public school purposes within the State of Texas, and, as the defendant could not and would not use the land for such purposes, the State was entitled to have the

patents cancelled and to recover the land. 31 Texas Civ. App., 223. Then a writ of error was obtained from this Court to enforce the constitutional right alleged by the defendant as stated above.

The decision below and in *Cameron* v. *Texas* suggest interesting questions, which it is not necessary to answer. It may be doubted how far any court can be bound by legislation after this Court has declared such legislation beyond the power of the State, any more than it would be if the law had been held unconstitutional. It would be curious to consider whether the mutual mistake in a matter which, on the face of the transaction, obviously went to the root of the gift was of such a nature as to warrant an avoidance when the mistake was discovered, including the question whether the mistake was one of law or fact. See *Bispham* v. *Price*, 15 How. 162, 170, 171; *Upton* v. *Tribilcock*, 91 U. S. 44; *Snell* v. *Insurance Co.*, 98 U. S. 85, 90–92; *Griswold* v. *Hazard*, 141 U. S. 260, 284; *Hirschfield* v. *London, Brighton & South Coast Ry.*, 2 Q. B. D. 1. There is the further consideration whether the gift created a public charity, as contended by the plaintiff in error, and if so, or whatever the nature of the trust, whether there is such a failure of the donee as to invalidate the gift and to destroy the legal title of the defendant, if otherwise good. See *Stratton* v. *Physio-Medical College*, 149 Mass. 505, 508, and cases cited.

We shall consider none of these questions, because we are of opinion that the plaintiff in error must fail on the short ground that it is a stranger to the gift. The plaintiff in error treats the change brought about by the decision in 162 U. S. 1, as if it had been a cession of territory or mere transfer of sovereignty by that or other means. It was nothing of the sort. It was a discovery that the State of Texas never had had a title to the land known as Greer County. The United States found itself at liberty to do what it chose with that land. It could have done nothing. It could have subdivided it at will. It could have made it part of some existing county. The land and its inhabitants retained no legal personality, least of all that personality with which Texas had purported to endow them. The United States, it is true, very properly did what it could to preserve the former condition of things. By § 1 of the Act of May, 1896, c. 155, 29 Stat. 113, it provided that "all public buildings and property of every description heretofore belonging to Greer County, Texas, or used in the administration of the public business thereof is hereby declared to be the property of said Greer County, Oklahoma," and otherwise it did all in its power to keep up the legal continuity of the county with the supposed old one. But some things were not within its power, and one thing which it could not do was to make an artificial creation of its own successor to the title to lands in Texas, supposing that title to have been parted with, by its independent fiat. Without the consent of Texas no corporation created by another sovereignty could succeed to Texas lands.

Greer County, Oklahoma, being a corporation created by a different sovereignty from that which purported to create Greer County, Texas, is technically a different person. It can claim the legal title, which Texas purported to convey to a creation of its own, only by succession, or that feigned identity familiar in the cases of executor and heir. See *Day* v. *Worcester, Nashua & Rochester R. R.*, 151 Mass. 302, 307, 308; Littleton, § 337; *North* v. *Butts*, Dyer, 139*b*, 140*a*; *Oates* v. *Frith*, Hob. 130. But succession to land is governed wholly by the law of the place where the land lies. *De Vaughn* v. *Hutchinson*, 165 U. S. 566, 570. The land in controversy was no part of Greer County, but lies in Texas, and Texas, so far from having assented to the succession of the defendant, has assumed to deal with the land as its own, by legislation, and has directed this suit to be brought to recover it. The legal title of the State is clear, for on the disappearance of the *de facto* county the State took whatever title that county had. See *Meriwether* v. *Garrett*, 102 U. S. 472. The legal title is what is in question before us, and the actual continuity of the inhabitants of the county could be recognized only by way of trust. But it would be wrong to encourage the notion that the title still may be charged with a trust in favor of schools in Greer County. The aim of the statute, under which the patents were made out, was the support of Texas schools. That was its dominant purpose. We think it unlikely that any Court of Equity would deem it equitable to direct the fund to any other trust.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.

END OF CASE